

HOUSE BILL No. 1634

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.4; IC 24-4.5.

Synopsis: Mortgage loan creditors and originators. Makes various changes to the laws concerning licensing residential mortgage loan creditors and originators to comply with requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. Repeals provisions being superseded by this bill. Repeals provisions under the Uniform Consumer Credit Code concerning the following: (1) A definition index. (2) Revocations of certain licenses.

Effective: July 1, 2009.

Bardon

January 16, 2009, read first time and referred to Committee on Financial Institutions.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1634

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4.4-1-102, AS ADDED BY P.L.145-2008,
2 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 102. (1) This article shall be liberally construed
4 and applied to promote its underlying purposes and policies.

5 (2) The underlying purposes and policies of this article are:

6 (a) to permit and encourage the development of fair and
7 economically sound first lien mortgage lending practices; and

8 (b) to conform the regulation of first lien mortgage lending
9 practices to applicable state and federal laws, rules, and
10 regulations.

11 (3) A reference to a requirement imposed by this article includes
12 reference to a related rule of the department adopted under this article.

13 **(4) In order to carry out the purposes of this article, the director**
14 **has the broad administrative authority to:**

15 **(a) administer, interpret, and enforce this article; and**

16 **(b) adopt rules or issue policies and guidance in implementing**
17 **this article.**



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(4) (5) A reference to a federal law in this article is a reference to the law in effect December 31, 2008.

SECTION 2. IC 24-4.4-1-202, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 202. This article does not apply to the following:

(1) Extensions of credit to government or governmental agencies or instrumentalities.

(2) A first lien mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.

(3) An extension of credit primarily for a business, a commercial, or an agricultural purpose.

(4) A first lien mortgage transaction made:

(a) in compliance with the requirements of; and

(b) by a community development corporation (as defined in IC 4-4-28-2) acting as a subrecipient of funds from; the Indiana housing and community development authority established by IC 5-20-1-3.

(5) A supervised financial organization.

(4) An extension of credit originated by:

(a) a depository institution;

(b) subsidiaries that are:

(i) owned and controlled by a depository institution; and

(ii) regulated by a federal banking agency; or

(c) an institution regulated by the Farm Credit Administration.

(6) An operating subsidiary that is majority owned; directly or indirectly; by a supervised financial organization to the extent the operating subsidiary is regulated by the chartering authority of the supervised financial organization.

(7) A credit union service organization that is majority owned; directly or indirectly; by one (1) or more credit unions.

(5) A first lien mortgage transaction originated by a registered mortgage loan originator, when acting for an entity described in subdivision (4). However, a privately insured state chartered credit union must comply with the system of mortgage loan originator registration developed by the Federal Financial Institutions Examinations Council under Section 1507 of the Safe and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE).

(6) An individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate

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family member of the individual.

(7) An individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(8) Unless the attorney is compensated by:

(a) a lender;

(b) a mortgage broker;

(c) other mortgage loan originator; or

(d) any agent of the lender, mortgage broker, or other mortgage loan originator described in clauses (a) through (c);

a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client.

~~(8)~~ (9) Agencies, instrumentalities, and government owned corporations of the United States, including United States government sponsored enterprises.

SECTION 3. IC 24-4.4-1-301, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 301. In addition to definitions appearing in subsequent chapters of this article, the following definitions apply throughout this article:

(1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

(a) controls;

(b) is controlled by; or

(c) is under common control with;

the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as found in the parties' language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products.

(4) "Agricultural products" includes agricultural, horticultural, viticultural, dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, any products raised or produced on farms, and any products processed or

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1 **manufactured from products raised or produced on farms.**

2 ~~(1)~~ **(5) "Credit"** means the right granted by a creditor to a debtor
3 to defer payment of debt or to incur debt and defer its payment.

4 ~~(2)~~ **(6) "Creditor"** means a person:

5 (a) that ~~regularly~~ engages in the extension of first lien
6 mortgage transactions that are subject to a credit service
7 charge or loan finance charge, as applicable, or are payable by
8 written agreement in more than four (4) installments (not
9 including a down payment); and

10 (b) to which the obligation is initially payable, either on the
11 face of the note or contract, or by agreement if there is not a
12 note or contract.

13 The term does not include a person described in subsection
14 ~~(13)(a)~~ **29(a)** in a tablefunded transaction. **A creditor may be an**
15 **individual, a limited liability company, a sole proprietorship,**
16 **a partnership, a trust, a joint venture, a corporation, an**
17 **unincorporated organization, or other form of entity, however**
18 **organized.**

19 **(7) "Credit service charge"** means the sum of the following:

20 (a) All charges payable, directly or indirectly, by a buyer
21 and imposed, directly or indirectly, by a seller as an
22 incident to the extension of credit, including any of the
23 following types of charges that are applicable:

24 (i) Time price differential.

25 (ii) Service.

26 (iii) Carrying or other charge, however denominated.

27 (iv) Premium or other charge for any guarantee or
28 insurance protecting the seller against the buyer's
29 default or other credit loss.

30 (b) All charges incurred for investigating the collateral or
31 credit worthiness of the buyer.

32 The term does not include charges paid or payable to a third
33 party that are not required by the seller as a condition or
34 incident to the extension of credit, except for borrower paid
35 mortgage broker fees, including fees paid directly to the
36 broker or the seller (for delivery to the broker), whether the
37 fees are paid in cash or financed. However, borrower paid
38 mortgage broker fees do not include fees paid to a mortgage
39 broker by a creditor, including yield spread premiums and
40 service release fees.

41 ~~(3)~~ **(8) "Department"** refers to the members of the department of
42 financial institutions.

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(9) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

~~(4)~~ **(10) "Director" refers to the director of the department of financial institutions or the director's designee.**

~~(5)~~ **(11) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:**

- (a) condominium unit;
- (b) cooperative unit;
- (c) mobile home; or
- (d) trailer;

that is used as a residence.

(12) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

~~(6)~~ **(13) "First lien mortgage transaction" means a loan in which a first mortgage, or a land contract which constitutes a first lien, is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.**

(14) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(15) "Individual" means a natural person.

(16) "Licensee" means a person licensed as either a creditor or a mortgage loan originator under this article.

~~(7)~~ **(17) "Loan" includes:**

- (a) the creation of debt by:
 - (i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or
 - (ii) the extension of credit by a person who regularly engages as a seller in credit transactions primarily secured by an interest in land;
- (b) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and
- (c) the forbearance of debt arising from a loan.

(18) "Loan finance charge" means the sum of the following:

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(a) All charges payable, directly or indirectly, by the debtor and imposed, directly or indirectly, by the lender as an incident to the extension of credit, including any of the following types of charges that are applicable:

(i) Interest or any amount payable under a point, discount, or other system of charges, however denominated.

(ii) Premium or other charge for any guarantee or insurance protecting the lender against the debtor's default or other credit loss.

(b) All charges incurred for investigating the collateral or credit worthiness of the debtor.

The term does not include charges paid or payable to a third party that are not required by the lender as a condition or incident to the extension of credit except for borrower paid mortgage broker fees, including fees paid directly to the broker or the lender (for delivery to the broker), whether the fees are paid in cash or financed. However, borrower paid mortgage broker fees do not include fees paid to a mortgage broker by a creditor, including yield spread premiums and service release fees.

(19) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under this article. For purposes of this subdivision, the term "clerical or support duties" may include, subsequent to the receipt of an application the following:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan.

(b) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:

(i) offering or negotiating loan rates or terms; or

(ii) counseling consumers about residential mortgage loan rates or terms.

An individual engaging solely in loan processor or underwriter activities, shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards,

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stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(20) "Mortgage loan originator" means an individual who for compensation or gain, or in the expectation of compensation or gain, engages in taking a residential mortgage loan application or offering or negotiating terms of a residential mortgage loan. The term does not include the following:

(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed under this article.

(b) Unless the person or entity is compensated by:

(i) a creditor;

(ii) a loan broker;

(iii) other mortgage loan originator; or

(iv) any agent of the creditor, loan broker, or other mortgage loan originator described in items (i) through (iii);

a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

(21) "Nationwide Mortgage Licensing System and Registry" or "NMLSR" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(22) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.

~~(8)~~ (23) "Payable in installments", with respect to a debt or an obligation, means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

~~(9)~~ (24) "Person" includes an individual or an organization.

~~(10)~~ A person is "regularly engaged" as a creditor in first lien mortgage transactions in Indiana if:

(a) the person acted as a creditor in first lien mortgage transactions in Indiana more than five (5) times in the preceding calendar year; or

(b) the person did not meet the numerical standards set forth

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in subdivision (a) in the preceding calendar year, but has or will meet the numerical standards set forth in subdivision (a) in the current calendar year.

(25) "Principal" of a mortgage transaction means the total of:

(a) the net amount paid to, receivable by, or paid or payable for the account of the debtor; and

(b) to the extent that payment is deferred, amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees if not included in clause (a).

(26) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).

(d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(e) Offering to engage in any activity, or act in any capacity, described in this subdivision.

(27) "Registered mortgage loan originator" means any individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(b) is registered with, and maintains a unique identifier through, the NMLSR.

(28) "Revolving first lien mortgage transaction" means an arrangement between a creditor and a debtor in which:

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(a) the creditor permits the debtor to obtain advances from time to time;

(b) the unpaid balances of principal, credit service charges, or loan finance charges, and other appropriate charges are debited to an account; and

(c) the debtor has the privilege of paying the balances in installments.

~~(12)~~ "Supervised financial organization" means a person that is:

(a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States that authorizes the person to make loans and to receive deposits, including deposits into a savings, share, certificate, or deposit account; and

(b) subject to supervision by an official or agency of a state or of the United States.

~~(13)~~ (29) "Tablefunded" means a transaction in which:

(a) a person closes a first lien mortgage transaction in the person's own name as a mortgagee with funds provided by one (1) or more other persons; and

(b) the transaction is assigned simultaneously to the mortgage creditor providing the funding not later than one (1) business day after the funding of the transaction.

(30) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

SECTION 4. IC 24-4.4-2-201, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 201. (1) A creditor or mortgage servicer shall provide an accurate payoff amount for a first lien mortgage transaction to the debtor not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate payoff amount. A creditor or mortgage servicer who fails to provide an accurate payoff amount is liable for:

(a) one hundred dollars (\$100) if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate payoff amount is provided;

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1 if an accurate payoff amount is not provided by the creditor or
 2 mortgage servicer not later than ten (10) calendar days after the
 3 creditor or mortgage servicer receives the debtor's second written
 4 request, and the creditor or mortgage servicer fails to comply with
 5 subdivision (a).

6 (2) This subsection applies to a first lien mortgage transaction with
 7 respect to which any installment or minimum payment due is
 8 delinquent for at least sixty (60) days. The creditor, servicer, or the
 9 creditor's agent shall acknowledge a written offer made in connection
 10 with a proposed short sale not later than ten (10) business days after the
 11 date of the offer if the offer complies with the requirements for a
 12 qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The
 13 creditor, servicer, or creditor's agent is required to acknowledge a
 14 written offer made in connection with a proposed short sale from a
 15 third party acting on behalf of the debtor only if the debtor has
 16 provided written authorization for the creditor, servicer, or creditor's
 17 agent to do so. Not later than thirty (30) business days after receipt of
 18 an offer under this subsection, the creditor, servicer, or creditor's agent
 19 shall respond to the offer with an acceptance or a rejection of the offer.

20 **An acceptance of a short sale offer under this section precludes the**
 21 **creditor from seeking to recover any deficiency balance.** As used in
 22 this subsection, "short sale" means a transaction in which the property
 23 that is the subject of a first lien mortgage transaction is sold for an
 24 amount that is less than the amount of the debtor's outstanding
 25 obligation under the first lien mortgage transaction. A creditor or
 26 mortgage servicer that fails to respond to an offer within the time
 27 prescribed by this subsection is liable in accordance with 12 U.S.C.
 28 2605(f) in any action brought under that section.

29 SECTION 5. IC 24-4.4-2-401, AS ADDED BY P.L.145-2008,
 30 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2009]: Sec. 401. (1) Unless a person subject to this article has
 32 first obtained a license **under this article** from the department **and**
 33 **annually maintains the license**, the person shall not ~~regularly~~ engage
 34 in Indiana as a creditor in first lien mortgage transactions. ~~However,~~
 35 ~~this article does not require an employee of a person that is licensed~~
 36 ~~under this article to obtain a license to make a first lien mortgage loan.~~

37 (2) **Except as provided in subsection (3), after December 31,**
 38 **2009, individuals may not engage in the business of a mortgage**
 39 **loan originator without being issued a mortgage loan originator**
 40 **license by the department under this article and annually**
 41 **maintaining the license.**

42 (3) **An individual who conducts a mortgage loan originator**

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business as a sole proprietor is required to obtain only a creditor's license under this article. However, the individual must meet the background, education, and testing requirements prescribed for a mortgage loan originator.

(4) Each licensed creditor and each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the NMLSR. Each licensed mortgage loan originator must be employed by, and associated with, a licensed creditor in the NMLSR in order to originate loans.

(5) Applicants for a license must apply for a license under this article in a form prescribed by the director. Each form:

(a) must contain content as set forth by rule, instruction, or procedure of the director; and

(b) may be changed or updated as necessary by the director in order to carry out the purposes of this article.

(6) To fulfill the purposes of this article, the director may establish relationships or contracts with the NMLSR or other entities designated by the NMLSR to:

(a) collect and maintain records; and

(b) process transaction fees or other fees related to licensees or other persons subject to this article.

(7) For the purpose of participating in the NMLSR, the director may:

(a) waive or modify, in whole or in part, by rule or order, any or all of the requirements of this article; and

(b) establish new requirements as reasonably necessary to participate in the NMLSR.

SECTION 6. IC 24-4.4-2-402, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 402. (1) The department shall receive and act on all applications for licenses to engage in first lien mortgage transactions. Applications must be made as prescribed by the director.

(2) A license may not be issued unless the department finds that the **professional training and experience**, financial responsibility, character, and fitness of:

(a) the applicant and any significant affiliate of the applicant;

(b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and

(c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant;

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are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(3) The director is entitled to request evidence of compliance with this section at:

- (a) the time of application;
- (b) the time of renewal of a license; or
- (c) any other time considered necessary by the director.

(4) Evidence of compliance with this section ~~may~~ **must** include:

(a) criminal background checks, **as described in section 402.1 of this chapter**, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);

(b) credit histories **as described in section 402.2 of this chapter**; and

(c) **prelicensing education requirements as described in section 402.3 of this chapter for all:**

(i) mortgage loan originators; and

(ii) other individuals as required by the director;

(d) **prelicensing written test requirements as described in section 402.4 of this chapter for all:**

(i) mortgage loan originators; and

(ii) other individuals as required by the director;

(e) **surety bond requirements as described in section 402.5 of this chapter;**

(f) **a review of licensure actions in this and other states; and**

~~(c)~~ (g) other background checks considered necessary by the director.

If the director requests a national criminal history background check under subdivision (a) for an individual described in subsection (2); the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate; at the time evidence of compliance is requested under subsection (3). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

(5) **An individual who has had a mortgage loan originator license revoked in any state may not be licensed as a mortgage loan originator under this article. The individual must submit personal**

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1 history and experience information in a form prescribed by the
 2 NMLSR, including the submission of authorization for the NMLSR
 3 and the director to obtain information related to any
 4 administrative, civil, or criminal findings by any governmental
 5 jurisdiction.

6 (6) For purposes of this section and in order to reduce the points
 7 of contact which the director may have to maintain for purposes of
 8 this section, the director may use the NMLSR as a channeling
 9 agent for requesting and distributing information to and from any
 10 source so directed by the director.

11 ~~(5)~~ (7) The department may deny an application under this section
 12 if the director of the department determines that the application was
 13 submitted for the benefit of, or on behalf of, a person who does not
 14 qualify for a license.

15 ~~(6)~~ (8) Upon written request, the applicant is entitled to a hearing on
 16 the question of the qualifications of the applicant for a license in the
 17 manner provided in IC 4-21.5.

18 ~~(7)~~ (9) The applicant shall pay the following fees at the time
 19 designated by the department:

20 (a) An initial license fee as established by the department under
 21 IC 28-11-3-5.

22 (b) An annual renewal fee as established by the department under
 23 IC 28-11-3-5.

24 (c) Examination fees as established by the department under
 25 IC 28-11-3-5.

26 ~~(8)~~ (10) A fee as established by the department under IC 28-11-3-5
 27 may be charged for each day the annual renewal fee under subsection
 28 ~~(7)(b)~~ 9(b) is delinquent.

29 ~~(9)~~ (11) A license issued under this section is not assignable or
 30 transferable.

31 ~~(10)~~ Subject to subsection (11), the director may designate an
 32 automated central licensing system and repository, operated by a third
 33 party, to serve as the sole entity responsible for:

34 (a) processing applications and renewals for licenses under this
 35 section; and

36 (b) performing other services that the director determines are
 37 necessary for the orderly administration of the department's
 38 licensing system under this article.

39 ~~(11)~~ The director's authority to designate an automated central
 40 licensing system and repository under subsection (10) is subject to the
 41 following:

42 (a) The director or the director's designee may not require any

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person exempt from licensure under this article; or any employee or agent of an exempt person; to:

(i) submit information to; or

(ii) participate in;

the automated central licensing system and repository.

(b) Information stored in the automated central licensing system and repository is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:

(i) obtain information from the automated central licensing system and repository; unless the person is authorized to do so by statute;

(ii) initiate any civil action based on information obtained from the automated central licensing system if the information is not otherwise available to the person under any other state law; or

(iii) initiate any civil action based on information obtained from the automated central licensing system if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(c) Documents, materials, and other forms of information in the control or possession of the automated central licensing system and repository that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director; the director's designee; or a licensee; or

(ii) otherwise obtained by the automated central licensing system and repository;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3; subject to subpoena; subject to discovery; or admissible in evidence in any civil action. However, the director or the director's designee may use the documents, materials, or other information available to the director or the director's designee in furtherance of any action brought in connection with the director's duties under this article.

(d) Disclosure of documents, materials, and information:

(i) to the director or the director's designee; or

(ii) by the director or the director's designee;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(e) Information provided to the automated central licensing system and repository is subject to IC 4-1-11.

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- (f) This subsection does not limit or impair a person's right to:
- (i) obtain information;
 - (ii) use information as evidence in a civil action or proceeding;
 - or
 - (iii) use information to initiate a civil action or proceeding;
- if the information may be obtained from the director or the director's designee under any law.
- (g) The director may require a licensee required to submit information to the automated central licensing system and repository to pay a processing fee considered reasonable by the director.

SECTION 7. IC 24-4.4-2-402.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 402.1. (1) When the director requests a national criminal history background check under section 402(4)(a) of this chapter for an individual described in section 402(2) of this chapter, the director shall require the individual to submit fingerprints to the department, state police department, or NMLSR, as directed, at the time evidence of compliance is requested under section 402(3) of this chapter. The individual to whom the request is made shall pay any fees or costs associated with processing and evaluating the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.**

(2) For purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any governmental agency.

(3) If the individual:

- (a) has been convicted of or pleaded guilty or nolo contendere to a felony during the seven (7) year period preceding the date of application; or**
- (b) has, at any time preceding the date of application, been convicted of or pleaded guilty or nolo contendere to a felony involving an act of fraud, dishonesty, breach of trust, or money laundering;**

the individual may not be approved for licensing as a mortgage

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1 loan originator under this article.

2 SECTION 8. IC 24-4.4-2-402.2 IS ADDED TO THE INDIANA
3 CODE AS A NEW SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2009]: Sec. 402.2. (1) When the director
5 requests a credit report for an individual described in section
6 402(2) of this chapter, the individual to whom the request is made
7 shall pay any fees or costs associated with procuring the report.

8 (2) The individual must submit personal history and experience
9 information in a form prescribed by the NMLSR, including the
10 submission of authorization for the NMLSR or the director to
11 obtain an independent credit report obtained from a consumer
12 reporting agency described in section 603(p) of the Fair Credit
13 Reporting Act (15 U.S.C. 1681a(p)).

14 (3) The director may consider one (1) or more of the following
15 when determining if an individual has demonstrated financial
16 responsibility:

- 17 (a) Bankruptcies filed within the last ten (10) years.
- 18 (b) Current outstanding judgments, except judgments solely
- 19 as a result of medical expenses.
- 20 (c) Current outstanding tax liens or other government liens or
- 21 filings.
- 22 (d) Foreclosures within the past three (3) years.
- 23 (e) A pattern of serious delinquent accounts within the past
- 24 three (3) years.

25 SECTION 9. IC 24-4.4-2-402.3 IS ADDED TO THE INDIANA
26 CODE AS A NEW SECTION TO READ AS FOLLOWS
27 [EFFECTIVE JULY 1, 2009]: Sec. 402.3. (1) To meet the
28 prelicensing education requirements referred to in section
29 402(4)(c) of this chapter, a person shall complete at least twenty
30 (20) hours of education approved in accordance with subsection
31 (2), which must include at least the following:

- 32 (a) Three (3) hours of federal law and regulations.
- 33 (b) Three (3) hours of ethics, which must include instruction
- 34 on fraud, consumer protection, and fair lending issues.
- 35 (c) Two (2) hours of training related to lending standards for
- 36 the nontraditional mortgage product marketplace.

37 (2) For purposes of subsection (1), prelicensing education
38 courses shall be reviewed and approved by the NMLSR based upon
39 reasonable standards. Review and approval of a prelicensing
40 education course shall include review and approval of the course
41 provider.

42 (3) The NMLSR may approve a prelicensing education course

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1 that is provided by an employer of the applicant or an entity that
 2 is affiliated with the applicant by an agency contract, or any
 3 subsidiary or affiliate of the employer or entity.

4 (4) Prelicensing education may be offered either in a classroom,
 5 online, or by any other means approved by the NMLSR.

6 (5) The prelicensing education requirements approved by the
 7 NMLSR in subsection (1) for any state shall be accepted as
 8 completion of prelicensing education requirements in this state.

9 (6) After June 30, 2009, a person previously licensed under this
 10 article applying to be licensed again shall prove that the person has
 11 completed all of the continuing education requirements for the
 12 year in which the license was last held.

13 SECTION 10. IC 24-4.4-2-402.4 IS ADDED TO THE INDIANA
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2009]: Sec. 402.4. (1) To meet the written test
 16 requirement referred to in section 402(4)(d) of this chapter, an
 17 individual shall pass, in accordance with the standards established
 18 under this section, a qualified written test developed by the
 19 NMLSR and administered by a test provider approved by the
 20 NMLSR based upon reasonable standards.

21 (2) A written test shall not be treated as a qualified written test
 22 for purposes of subsection (1) unless the test adequately measures
 23 the applicant's knowledge and comprehension in appropriate
 24 subject areas, including:

- 25 (a) ethics;
- 26 (b) federal law and regulation pertaining to mortgage
- 27 origination;
- 28 (c) state law and regulation pertaining to mortgage
- 29 origination; and
- 30 (d) federal and state law and regulation, including instruction
- 31 on fraud, consumer protection, the nontraditional mortgage
- 32 marketplace, and fair lending issues.

33 (3) This section does not prohibit a test provider approved by
 34 the NMLSR from providing a test at the location of:

- 35 (a) the employer of the applicant;
- 36 (b) any subsidiary or affiliate of the employer of the
- 37 applicant; or
- 38 (c) any entity with which the applicant holds an exclusive
- 39 arrangement to conduct the business of a mortgage loan
- 40 originator.

41 (4) The following are the standards for demonstrating minimum
 42 competence with respect to the testing requirement:

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(a) **Passing Score** - An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of at least seventy-five percent (75%) correct answers to questions.

(b) **Initial Retests** - An individual may retake a test three (3) consecutive times with each consecutive test taken at least thirty (30) days after the preceding test.

(c) **Subsequent Retests** - After failing three (3) consecutive tests, an individual must wait at least six (6) months before taking the test again.

(d) **Retest After Lapse of License** - A licensed mortgage loan originator who fails to maintain a valid license for a period of at least five (5) years must retake the test to be issued a new license, not taking into account any time during which the individual is a registered mortgage loan originator.

SECTION 11. IC 24-4.4-2-402.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 402.5. (1)** Each creditor and mortgage loan originator shall be covered by a surety bond in accordance with this section. If a mortgage loan originator is an employee or exclusive agent of a person subject to this article, the surety bond of the person subject to this article may be used instead of the mortgage loan originator's surety bond requirement under this section.

(2) **A surety bond:**

(a) must provide coverage for each creditor and mortgage loan originator in an amount as prescribed in subsection (4); and

(b) must be in a form prescribed by the director.

(3) The director may adopt rules with respect to the requirements for a surety bond as are necessary to accomplish the purposes of this article.

(4) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of loans originated as determined by the director.

(5) If an action is commenced on a licensee's surety bond, the director may require the filing of a new bond.

(6) A licensee shall file a new surety bond immediately upon recovery of any action on the licensee's surety bond.

SECTION 12. IC 24-4.4-2-402.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 402.6. (1)** Subject to subsection

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(6), the director shall designate the NMLSR to serve as the sole entity responsible for:

- (a) processing applications and renewals for licenses under this article;
- (b) issuing unique identifiers for licensees under this article; and
- (c) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under this article.

(2) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director shall regularly report significant or recurring violations of this article to the NMLSR.

(3) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may report complaints received regarding licensees under this article to the NMLSR.

(4) The director shall report publicly adjudicated licensure actions against a licensee to the NMLSR.

(5) The director shall establish a process in which licensees may challenge information reported to the NMLSR by the department.

(6) The director's authority to designate the NMLSR under subsection (1) is subject to the following:

- (a) Except with respect to a privately insured state chartered credit union, the director or the director's designee may not require any person exempt from licensure under this article, or any employee or agent of an exempt person, to:

- (i) submit information to; or
- (ii) participate in;

the NMLSR.

(b) Information stored in the NMLSR is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:

- (i) obtain information from the NMLSR, unless the person is authorized to do so by statute;
- (ii) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or
- (iii) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.

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1 (c) Documents, materials, and other forms of information in
 2 the control or possession of the NMLSR that are confidential
 3 under IC 28-1-2-30 and that are:

4 (i) furnished by the director, the director's designee, or a
 5 licensee; or

6 (ii) otherwise obtained by the NMLSR;
 7 are confidential and privileged by law and are not subject to
 8 inspection under IC 5-14-3, subject to subpoena, subject to
 9 discovery, or admissible in evidence in any civil action.
 10 However, the director may use the documents, materials, or
 11 other information available to the director in furtherance of
 12 any action brought in connection with the director's duties
 13 under this article.

14 (d) Disclosure of documents, materials, and information:

15 (i) to the director; or

16 (ii) by the director;

17 under this subsection does not result in a waiver of any
 18 applicable privilege or claim of confidentiality with respect to
 19 the documents, materials, or information.

20 (e) Information provided to the NMLSR is subject to
 21 IC 4-1-11.

22 (f) This subsection does not limit or impair a person's right to:

23 (i) obtain information;

24 (ii) use information as evidence in a civil action or
 25 proceeding; or

26 (iii) use information to initiate a civil action or proceeding;
 27 if the information may be obtained from the director or the
 28 director's designee under any law.

29 (g) Except as otherwise provided in Public Law 110-289,
 30 Section 1512, the requirements under any federal law or
 31 IC 5-14-3 regarding the privacy or confidentiality of any
 32 information or material provided to the NMLSR, and any
 33 privilege arising under federal or state law, including the
 34 rules of any federal or state court, with respect to the
 35 information or material, continues to apply to the information
 36 or material after the information or material has been
 37 disclosed to the NMLSR. The information and material may
 38 be shared with all state and federal regulatory officials with
 39 mortgage industry oversight authority without the loss of
 40 privilege or the loss of confidentiality protections provided by
 41 federal law or IC 5-14-3.

42 (h) For purposes of this section, the director may enter

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agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule or order of the director.

(i) Information or material that is subject to a privilege or confidentiality under subsection (6)(g) is not subject to:

(i) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(j) IC 5-14-3 relating to the disclosure of confidential supervisory information or any information or material described in subsection (6)(g) that is inconsistent with subsection (6)(g) is superseded by the requirements of this section.

(k) This section does not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person described in section 402(2) of this chapter that are included in the NMLSR for access by the public.

(l) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director.

SECTION 13. IC 24-4.4-2-403, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 403. (1) The minimum standards for license renewal for a creditor include the following:

(a) The creditor has continued to meet the surety bond requirement under section 402.5 of this chapter.

(b) The creditor has filed the creditor's annual call report in a manner that satisfies section 505(4) of this chapter.

(c) The creditor has paid all required fees for renewal of the license.

(d) Individuals described in section 402(2) of this chapter, as determined by the director, have satisfied the annual

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continuing education requirements described in section 403.2 of this chapter.

(e) The creditor and individuals described in section 402(2) of this chapter continue to meet all the standards for licensing contained in section 402 of this chapter.

(1) (2) A license issued by the department authorizing a person to engage in first lien mortgage transactions as a creditor under this article may be ~~revoked~~ **suspended** by the department if the person fails to:

- (a) file any renewal form required by the department; or
- (b) pay any license renewal fee described under section 402 of this chapter;

not later than sixty (60) days after the due date.

(2) (3) A person whose license is ~~revoked~~ **suspended** under this section may do either of the following:

- (a) Pay all delinquent fees and apply for a ~~new~~ **reinstatement of the license**.
- (b) Appeal the ~~revocation~~ **suspension** to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license ~~revocation~~ **suspension**, the license remains in force.

SECTION 14. IC 24-4.4-2-403.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 403.1. (1) The minimum standards for license renewal for mortgage loan originators include the following:**

- (a) The mortgage loan originator continues to meet the minimum standards for license issuance under section 402 of this chapter.
- (b) The mortgage loan originator has satisfied the annual continuing education requirements described in section 403.2 of this chapter.
- (c) The mortgage loan originator has paid all required fees for renewal of the license.

(2) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal expires. The director may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the NMLSR.

SECTION 15. IC 24-4.4-2-403.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 403.2. (1) To meet the annual continuing education requirements referred to in section 403 of this**

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chapter, licensed mortgage loan originators and other individuals as determined by the director, shall complete at least eight (8) hours of education approved in accordance with subsection (2), which must include at least the following:

(a) Three (3) hours of federal law and regulations.

(b) Two (2) hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues.

(c) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) For purposes of subsection (1), continuing education courses shall be reviewed and approved by the NMLSR based upon reasonable standards. Review and approval of a continuing education course must include review and approval of the course provider.

(3) The NMLSR may approve an education course that is provided by a creditor, an employer of the mortgage loan originator, or an entity that is affiliated with the creditor or mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(4) Continuing education may be offered either in a classroom, online, or by any other means approved by the NMLSR.

(5) An individual subject to the continuing education requirements under this section:

(a) except as provided in section 403.1(2) of this chapter and subsection (9), may receive credit for a continuing education course only in the year in which the course is taken; and

(b) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(6) An individual subject to the continuing education requirements under this section who is an approved instructor of approved continuing education courses may receive credit for the individual's own annual continuing education requirement at the rate of two (2) hours credit for every one (1) hour taught.

(7) A person who has successfully completed the education requirements approved by the NMLSR in subsection (1) for any state shall be accepted as completion of the continuing education requirements in this state.

(8) A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held before issuance of a new or renewed license.

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(9) A person meeting the requirements of section 403.1(1)(a) and 403.1(1)(c) of this chapter may make up any deficiency in continuing education as established by rule of the department or policy of the director.

SECTION 16. IC 24-4.4-2-404, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 404. (1) The department may issue to a person licensed to engage in first lien mortgage transactions **as a creditor or a mortgage loan originator** an order to show cause why the person's license should not be revoked or suspended for a period determined by the department. The order must state the place and time for a meeting with the department that is not less than ten (10) days from the date of the order. After the meeting, the department shall revoke or suspend the license if the department finds that:

(a) the licensee has repeatedly and willfully violated:

(i) this article or any rule or order lawfully adopted or issued under this article; or

(ii) any other state or federal law, regulation, or rule applicable to first lien mortgage transactions; ~~or~~

(b) the licensee does not meet the licensing qualifications contained in section 402 of this chapter; or

~~(b)~~ **(c) facts or conditions exist which would clearly have justified the department in refusing to grant a license had the facts or conditions been known to exist at the time the application for the license was made.**

(2) Except as provided in section 403 of this chapter, a revocation or suspension of a license is not authorized under this article unless before instituting proceedings to suspend or revoke the license, the department gives notice to the licensee of the conduct or facts that warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(3) If the department finds that probable cause for revocation of a license exists and that enforcement of this article requires immediate suspension of the license pending investigation, the department may, after a hearing with the licensee upon five (5) days written notice to the licensee, enter an order suspending the license for not more than thirty (30) days.

(4) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of the revocation or suspension. Not later than five (5) days after the entry of the order the department shall deliver to the licensee a copy of the

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order and the findings supporting the order.

(5) Any person holding a license to engage in first lien mortgage transactions **as a creditor or mortgage loan originator** may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this paragraph does not affect the person's liability for acts previously committed and coming within the scope of this article.

(6) If the director determines it to be in the public interest, the director may pursue revocation of a license of a licensee that has relinquished the license under subsection (5).

~~(6)~~ (7) A revocation, suspension, or relinquishment of a license does not impair or affect the obligation of any preexisting lawful contract between:

(a) the person whose license has been revoked, suspended, or relinquished; and

(b) any debtor.

~~(7)~~ (8) The department may reinstate a license **or** terminate a suspension **or grant of a new** license to a person whose license has been ~~revoked~~ **or** suspended if the director determines that, at the time the determination is made, there is no fact or condition that exists that clearly would justify the department in refusing to grant a license.

~~(8)~~ (9) If the director:

(a) has just cause to believe an emergency exists from which it is necessary to protect the interests of the public; or

(b) determines that a license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;

the director may proceed with the revocation of the license under IC 4-21.5-3-6.

SECTION 17. IC 24-4.4-2-404.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 404.1. (1) If the director determines that a director, an officer, or an employee of a creditor has:**

(a) committed a violation of a statute, a rule, a final cease and desist order, any condition imposed in writing by the director in connection with the granting of any application or other request by the creditor, or any written agreement between the creditor and the director;

(b) committed fraudulent or unconscionable conduct; or

(c) been convicted of, has pleaded guilty or nolo contendere to, or is under indictment for, a felony under the laws of Indiana or any other jurisdiction;

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the director, subject to subsection (2), may issue and serve upon the officer, director, or employee a notice of the director's intent to issue an order removing the person from the person's office or employment, an order prohibiting any participation by the person in the conduct of the affairs of any creditor, or an order both removing the person and prohibiting the person's participation.

(2) A violation, practice, or breach specified in subsection (1) is subject to the authority of the director under subsection (1) if the director finds any of the following:

(a) The interests of the creditor's customers could be seriously prejudiced by reason of the violation or practice.

(b) The violation, practice, or breach involves personal dishonesty on the part of the officer, director, or employee involved.

(c) The violation, practice, or breach demonstrates a willful or continuing disregard by the officer, director, or employee for state and federal laws and regulations, and for the consumer protections contained in this article.

(3) A person who:

(a) is under indictment for;

(b) has been convicted of; or

(c) has pleaded guilty or nolo contendere to;

a felony under the laws of Indiana or any other jurisdiction may not serve as an officer, a director, or an employee of a creditor, or serve in any similar capacity, unless the person obtains the written consent of the director.

(4) A creditor that willfully permits a person to serve the creditor in violation of subsection (3) is subject to a civil penalty of five hundred dollars (\$500) for each day the violation continues.

SECTION 18. IC 24-4.4-2-404.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 404.2. (1) A notice issued under this chapter must:

(a) be in writing;

(b) contain a statement of the facts constituting the alleged practice, violation, or breach;

(c) state the facts alleged in support of the violation, practice, or breach;

(d) state the director's intention to enter an order under section 404.1(1) of this chapter;

(e) be delivered to the board of directors of the creditor;

(f) be delivered to the officer, director, or employee

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1 concerned; and

2 (g) specify the procedures that must be followed to initiate a
3 hearing to contest the facts alleged.

4 (2) If a hearing is requested not later than ten (10) days after
5 service of the written notice, the director or designee of the
6 director shall hold a hearing concerning the alleged practice,
7 violation, or breach. The hearing shall be held not later than
8 forty-five (45) days after receipt of the request. The director or
9 designee of the director, based on the evidence presented at the
10 hearing, shall enter a final order under section 404.4 of this
11 chapter.

12 (3) If no hearing is requested within the time specified in
13 subsection (2), the director may proceed to issue a final order
14 described in subsection (2) on the basis of the facts set forth in the
15 written notice.

16 (4) An officer, director, or employee who is removed from a
17 position under a removal order that has become final may not
18 participate in the conduct of the affairs of any licensee under this
19 article without the approval of the director.

20 (5) The director may, for the protection of the creditor or the
21 interests of its customers, suspend from office or prohibit from
22 participation in the affairs of the creditor an officer, a director, or
23 an employee of a creditor who is the subject of a written notice
24 served by the director under subsection (1). A suspension or
25 prohibition under this subsection becomes effective upon service of
26 the notice. Unless stayed by a court in a proceeding authorized by
27 subsection (6), the notice shall remain in effect pending completion
28 of the proceeding under the written notice served under subsection
29 (1) and until the effective date of an order entered by the director
30 under subsection (2) or (3). Copies of the notice shall also be served
31 upon the creditor or affiliate of which the person is an officer, a
32 director, or an employee.

33 (6) Not more than ten (10) days after an officer, a director, or an
34 employee has been suspended from office or prohibited from
35 participation in the conduct of the affairs of the creditor or affiliate
36 under subsection (5), the officer, director, or employee may apply
37 to a court having jurisdiction for a stay of the suspension or
38 prohibition pending completion of the proceedings under
39 subsection (2), and the court may stay the suspension or
40 prohibition.

41 (7) The department shall maintain an official record of a
42 proceeding under this chapter.

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SECTION 19. IC 24-4.4-2-404.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 404.3. If the director enters into a consent to a final order under section 404.4 of this chapter with a creditor, a director, an officer, or an employee, the director is not required to issue and serve a notice of charges upon the creditor, director, or officer under section 404.1 of this chapter. A consent agreement may be negotiated and entered into before or after the issuance of a notice of charges. The director shall provide a copy of the consent order to the board of directors of the creditor.**

SECTION 20. IC 24-4.4-2-404.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 404.4. (1) If the director finds that the conditions specified in section 404.1 of this chapter have been established, the director may issue a final order.**

(2) A final order must include separately stated findings of fact and conclusions of law for all aspects of the order.

(3) In exercising the director's enforcement powers under this chapter against an officer, director, or employee, the director may:

- (a) remove the officer, director, or employee from the person's office, position, or employment;**
- (b) prohibit any participation by the officer, director, or employee in the conduct of the affairs of any creditor; or**
- (c) take both of the actions set forth in subdivisions (a) and (b).**

(4) A final order shall be issued in writing not later than ninety (90) days after conclusion of the hearing, unless this period is waived or extended with the written consent of all parties or for good cause shown.

(5) If the officer, director, or employee does not appear individually or by a duly authorized representative at the hearing, the officer, director, or employee is considered to have consented to the issuance of a final order.

(6) The remedies provided in this chapter are in addition to other remedies contained in this article.

SECTION 21. IC 24-4.4-2-404.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 404.5. (1) A final order issued under this chapter is effective at the expiration of ten (10) days after service of the order. However, a final order issued upon consent under section 404.3 of this chapter is effective at the time specified in the order.**

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(2) A final order remains effective and enforceable as provided in the order.

(3) The department or a reviewing court may stay, modify, or vacate a final order.

SECTION 22. IC 24-4.4-2-404.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 404.6. (1) A civil penalty imposed on a director or an officer in a final order issued under section 404.4 of this chapter may not exceed fifteen thousand dollars (\$15,000) for each practice, violation, or act found to exist in the final order.**

(2) In determining the amount of a civil penalty assessed in a final order issued under section 404.4 of this chapter, the following factors shall be considered:

- (a) The appropriateness of the civil penalty with respect to the financial resources and good faith of the individual charged.
- (b) The gravity of the practice, violation, or act.
- (c) The history of previous practices, violations, or acts.
- (d) The economic benefit derived by the individual from the practice, violation, or act.
- (e) Other factors that justice requires.

(3) A creditor may not indemnify a director or an officer for a civil penalty imposed in a final order under section 404.4 of this chapter.

(4) Civil penalties shall be deposited in the financial institutions fund established by IC 28-11-2-9.

SECTION 23. IC 24-4.4-2-404.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 404.7. The department may enforce any of the following by applying for appropriate relief to a court having jurisdiction:**

- (a) An order issued under this chapter.
- (b) A written agreement entered into by the department and any director, officer, employee, or agent of a creditor.
- (c) Any condition imposed in writing by the department on any director, officer, or employee of a creditor.

SECTION 24. IC 24-4.4-2-404.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 404.8. (1) The director may exercise the enforcement powers of this chapter against an officer, a director, or an employee of an affiliate, as if the affiliate were a creditor, if the director determines that a practice of the officer,**

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1 director, or employee of the affiliate, could cause either:

2 (a) the creditor to suffer substantial loss or other damage; or

3 (b) the interests of the creditor's customers to be seriously
4 prejudiced by reason of a violation or practice.

5 (2) In exercising the director's enforcement powers under this
6 chapter against an officer, a director, or an employee of an
7 affiliate, the director may:

8 (a) remove the officer, director, or employee from the
9 person's office, position, or employment;

10 (b) prohibit any participation by the officer, director, or
11 employee in the conduct of the affairs of any creditor; or

12 (c) take both of the actions set forth in subdivisions (a) and
13 (b).

14 (3) The director may issue and serve upon the officer, director,
15 or employee of the affiliate a notice of charges of the practice,
16 violation, or act.

17 SECTION 25. IC 24-4.4-2-405, AS ADDED BY P.L.145-2008,
18 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2009]: Sec. 405. (1) Every licensee shall maintain records in
20 a manner that will enable the department to determine whether the
21 licensee is complying with this article. The record keeping system of
22 a licensee is sufficient if the licensee makes the required information
23 reasonably available. The department shall determine the sufficiency
24 of the records and whether the licensee has made the required
25 information reasonably available. The department shall be given free
26 access to the records wherever the records are located. Records
27 concerning any first lien mortgage transaction shall be retained for two
28 (2) years after the making of the final entry relating to the transaction,
29 but in the case of a revolving first lien mortgage transaction, the two (2)
30 years required under this subsection is measured from the date of each
31 entry relating to the transaction.

32 (2) The unique identifier of any person originating a residential
33 mortgage loan must be clearly shown on all residential mortgage
34 loan application forms and any other documents as required by the
35 director.

36 (3) Every licensee shall use automated examination and
37 regulatory software designated by the director, including third
38 party software. Use of the software consistent with guidance and
39 policies issued by the director is not a violation of IC 28-1-2-30.

40 (4) Each creditor licensed by the department shall submit to the
41 NMLSR reports of condition, which must be in a form and must
42 contain information as the NMLSR may require.

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1 ~~(2) A licensee~~ **(5) Each creditor licensed by the department** shall
 2 file with the department **additional** financial statements relating to all
 3 first lien mortgage transactions originated by the ~~licensee~~. ~~The licensee~~
 4 ~~shall file the financial statements~~ **creditor** as required by the
 5 department, but not more frequently than annually, in the form
 6 prescribed by the department.

7 ~~(3)~~ **(6) A licensee licensed creditor** shall file notification with the
 8 department if the licensee:

- 9 (a) has a change in name, address, or any of its principals;
- 10 (b) opens a new branch, closes an existing branch, or relocates an
- 11 existing branch;
- 12 (c) files for bankruptcy or reorganization; or
- 13 (d) is subject to revocation or suspension proceedings by a state
- 14 or governmental authority with regard to the ~~licensee's~~ **licensed**
- 15 **creditor's** activities;

16 not later than thirty (30) days after the date of the event described in
 17 this subsection.

18 **(7) A licensed mortgage loan originator shall file notification**
 19 **with the department if the licensed mortgage loan originator:**

- 20 (a) **files for bankruptcy or is served in a foreclosure action; or**
- 21 (b) **is subject to revocation or suspension proceedings by a**
- 22 **state or governmental authority with regard to the mortgage**
- 23 **loan originator's activities;**

24 **not later than thirty (30) days after the date of the event described**
 25 **in this subsection.**

26 ~~(4)~~ **(8) A licensee** shall file notification with the department if ~~the~~
 27 ~~licensee or a key officer or director of the licensee:~~

- 28 (a) is under indictment for a felony ~~involving fraud, deceit, or~~
- 29 ~~misrepresentation~~ under the laws of Indiana or any other
- 30 jurisdiction; or
- 31 (b) has been convicted of or pleaded guilty or nolo contendere to
- 32 a felony ~~involving fraud, deceit, or misrepresentation~~ under the
- 33 laws of Indiana or any other jurisdiction;

34 not later than thirty (30) days after the date of the event described in
 35 this subsection.

36 SECTION 26. IC 24-4.4-3-102, AS ADDED BY P.L.145-2008,
 37 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2009]: Sec. 102. This chapter applies to a person that
 39 ~~regularly~~ engages as a creditor **or a mortgage loan originator** in first
 40 lien mortgage transactions in Indiana. **The authority of this chapter**
 41 **remains in effect, whether a licensee, individual, or person subject**
 42 **to this article acts or claims to act under any licensing or**

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1 **registration law of this state or claims to act without such**
 2 **authority.**

3 SECTION 27. IC 24-4.4-3-104, AS ADDED BY P.L.145-2008,
 4 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2009]: Sec. 104. (1) In administering this article and in order
 6 to determine whether the provisions of this article are being complied
 7 with by persons engaging in acts subject to this article, the department
 8 may examine the records of persons and may make investigations of
 9 persons as may be necessary to determine compliance. Records subject
 10 to examination under this section include the following:

- 11 (a) Training, operating, and policy manuals.
- 12 (b) Minutes of:
 - 13 (i) management meetings; and
 - 14 (ii) other meetings.
- 15 (c) Financial records, credit files, and data bases.
- 16 (d) Other records that the department determines are necessary to
 17 perform its investigation or examination.

18 The department may also administer oaths or affirmations, subpoena
 19 witnesses, **and** compel the attendance of witnesses, **including officers,**
 20 **principals, mortgage loan originators, employees, independent**
 21 **contractors, agents, and customers of licensees, and other**
 22 **individuals or persons subject to this article. The department may**
 23 **also** adduce evidence and require the production of any matter that is
 24 relevant to an investigation. The department shall determine the
 25 sufficiency of the records maintained and whether the person has made
 26 the required information reasonably available. The records concerning
 27 any transaction subject to this article shall be retained for two (2) years
 28 after the making of the final entry relating to the first lien mortgage
 29 transaction, but in the case of a revolving first lien mortgage
 30 transaction the two (2) year period is measured from the date of each
 31 entry.

32 (2) The department's examination and investigatory authority under
 33 this article includes the following:

- 34 (a) The authority to require a creditor to refund overcharges
 35 resulting from the creditor's noncompliance with the terms of a
 36 first lien mortgage transaction.
- 37 (b) The authority to require a creditor to comply with the penalty
 38 provisions set forth in IC 24-4.4-2-201.
- 39 (c) The authority to investigate complaints filed with the
 40 department by debtors.

41 (3) The department shall be given free access to the records
 42 wherever the records are located. **In making any examination or**

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1 investigation authorized by this article, the director may control
 2 access to any documents and records of the licensee or person
 3 under examination or investigation. The director may take
 4 possession of the documents and records or place a person in
 5 exclusive charge of the documents and records in the place where
 6 the documents are usually kept. During the period of control, a
 7 licensee or person may not remove or attempt to remove any of the
 8 documents and records except under a court order or with the
 9 consent of the director. Unless the director has reasonable grounds
 10 to believe the documents or records of the licensee or person have
 11 been, or are, at risk of being altered or destroyed for purposes of
 12 concealing a violation of this article, the licensee or person shall
 13 have access to the documents or records as necessary to conduct
 14 the licensee's or person's ordinary business affairs. If the person's
 15 records are located outside Indiana, the records shall be made available
 16 to the department at a convenient location within Indiana, or the person
 17 shall pay the reasonable and necessary expenses for the department or
 18 the department's representative to examine the records where they are
 19 maintained. The department may designate comparable officials of the
 20 state in which the records are located to inspect the records on behalf
 21 of the department.

22 (4) Upon a person's failure without lawful excuse to obey a
 23 subpoena or to give testimony and upon reasonable notice by the
 24 department to all affected persons, the department may apply to any
 25 civil court with jurisdiction for an order compelling compliance.

26 (5) The department shall not make public:

- 27 (a) the name or identity of a person whose acts or conduct the
- 28 department investigates under this section; or
- 29 (b) the facts discovered in the investigation.

30 However, this subsection does not apply to civil actions or enforcement
 31 proceedings under this article.

32 SECTION 28. IC 24-4.4-3-104.5 IS ADDED TO THE INDIANA
 33 CODE AS A NEW SECTION TO READ AS FOLLOWS
 34 [EFFECTIVE JULY 1, 2009]: **Sec. 104.5. To carry out the purposes**
 35 **of this section, the director may:**

- 36 (a) retain attorneys, accountants, or other professionals and
- 37 specialists as examiners, auditors, or investigators to conduct
- 38 or assist in the conduct of examinations or investigations;
- 39 (b) enter into agreements or relationships with other
- 40 government officials or regulatory associations in order to
- 41 improve efficiencies and reduce regulatory burden by
- 42 sharing:

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- 1 (i) resources;
- 2 (ii) standardized or uniform methods or procedures; and
- 3 (iii) documents, records, information, or evidence obtained
- 4 under this section;
- 5 (c) use, hire, contract, or employ public or privately available
- 6 analytical systems, methods, or software to examine or
- 7 investigate a licensee, an individual, or a person subject to this
- 8 article;
- 9 (d) accept and rely on examination or investigation reports
- 10 made by other government officials within or without this
- 11 state; and
- 12 (e) accept audit reports made by an independent certified
- 13 public accountant for the licensee, individual, or person
- 14 subject to this article in the course of that part of the
- 15 examination covering the same general subject matter as the
- 16 audit and may incorporate the audit report in the report of
- 17 the examination, report of investigation, or other writing of
- 18 the director.
- 19 SECTION 29. IC 24-4.4-3-104.6 IS ADDED TO THE INDIANA
- 20 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 21 [EFFECTIVE JULY 1, 2009]: Sec. 104.6. It is a violation of this
- 22 article for a person or individual subject to this article to:
- 23 (a) directly or indirectly employ any scheme, device, or
- 24 artifice to defraud or mislead borrowers or lenders or to
- 25 defraud any person;
- 26 (b) engage in any unfair or deceptive practice toward any
- 27 person;
- 28 (c) obtain property by fraud or misrepresentation;
- 29 (d) solicit or enter into a contract with a borrower that
- 30 provides in substance that the person or individual subject to
- 31 this article may earn a fee or commission through "best
- 32 efforts" to obtain a loan even though no loan is actually
- 33 obtained for the borrower;
- 34 (e) solicit, advertise, or enter into a contract for specific
- 35 interest rates, points, or other financing terms unless the
- 36 terms are actually available at the time of soliciting,
- 37 advertising, or contracting;
- 38 (f) conduct any business covered by this article without
- 39 holding a valid license as required under this article, or assist
- 40 or aide and abet any person in the conduct of business under
- 41 this article without a valid license as required under this
- 42 article;

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(g) fail to make disclosures as required by this article and any other applicable state or federal law including regulations thereunder;

(h) fail to comply with this article or rules adopted under this article, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this article;

(i) make, in any manner, any false or deceptive statement or representation, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;

(j) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the NMLSR or in connection with any investigation conducted by the director or another governmental agency;

(k) make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(l) collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this article;

(m) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;

(n) fail to account truthfully for money belonging to a party to a residential mortgage loan transaction; or

(o) knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information subject to examination under this article.

SECTION 30. IC 24-4.4-3-105, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 105. Except as otherwise provided, IC 4-21.5-3 governs any action taken by the department under this chapter or IC 24-4.4-2-401 through IC 24-4.4-2-405. IC 4-22-2 applies to the adoption of rules by the department under this article. **All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 shall be held in Marion County, Indiana, at a**

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1 **location designated by the director.** However, if the department
 2 determines that an emergency exists, the department may adopt any
 3 rules authorized by this article under IC 4-22-2-37.1.

4 SECTION 31. IC 24-4.4-3-106, AS ADDED BY P.L.145-2008,
 5 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2009]: Sec. 106. (1) After notice and hearing, the department
 7 may order a creditor, **a mortgage loan originator**, or a person acting
 8 on ~~the creditor's behalf~~ **behalf of the creditor or mortgage loan**
 9 **originator**, to cease and desist from engaging in violations of this
 10 article. In any civil court with jurisdiction:

11 (a) a respondent aggrieved by an order of the department may
 12 obtain judicial review of the order; and

13 (b) the department may obtain an order of the court for the
 14 enforcement of the department's order.

15 A proceeding for review or enforcement under this subsection shall be
 16 initiated by the filing of a petition in the court. Copies of the petition
 17 shall be served upon all parties of record.

18 (2) Not later than thirty (30) days after service of a petition for
 19 review upon the department under subsection (1), or within such
 20 further time as the court may allow, the department shall transmit to the
 21 court the original or a certified copy of the entire record upon which the
 22 order that is the subject of the review is based, including any transcript
 23 of testimony, which need not be printed. By stipulation of all parties to
 24 the review proceeding, the record may be shortened. After conducting
 25 a hearing on the matter, the court may:

26 (a) reverse or modify the order if the findings of fact of the
 27 department are clearly erroneous in view of the reliable,
 28 probative, and substantial evidence in the whole record;

29 (b) grant any temporary relief or restraining order the court
 30 considers just; and

31 (c) enter an order:

32 (i) enforcing;

33 (ii) modifying;

34 (iii) enforcing as modified; or

35 (iv) setting aside;

36 in whole or in part, the order of the department; or

37 (d) enter an order remanding the case to the department for
 38 further proceedings.

39 (3) An objection not urged at the hearing shall not be considered by
 40 the court unless the failure to urge the objection is excused for good
 41 cause shown. A party may move the court to remand the case to the
 42 department in the interest of justice for the purpose of:

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(a) adducing additional specified and material evidence; and
 (b) seeking a finding upon such evidence;
 upon good cause shown for the failure to previously adduce this evidence before the department.

(4) The jurisdiction of the court is exclusive and the court's final judgment or decree is subject to review on appeal in the same manner and form and with the same effect as in appeals from a final judgment or decree. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated not later than thirty (30) days after a copy of the order of the department is received. If a proceeding is not initiated within the time set forth in this subsection, the department may obtain a decree of a civil court with jurisdiction for enforcement of the department's order upon a showing that:

- (a) the order was issued in compliance with this section;
- (b) a proceeding for review was not initiated within the thirty (30) day period prescribed by this subsection; and
- (c) the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by a respondent, the department may not issue an order under this section but may bring a civil action for an injunction under section 111 of this chapter.

SECTION 32. IC 24-4.4-3-108, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 108. The department may bring a civil action to restrain a person from violating this article **or other state or federal law, rule, or regulation** and for other appropriate relief.

SECTION 33. IC 24-4.4-3-111, AS ADDED BY P.L.145-2008, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 111. (1) The department may bring a civil action against a creditor or a person acting on ~~the creditor's behalf~~ **behalf of the creditor or mortgage loan originator** to recover a civil penalty for willfully violating this article. If the court finds that the defendant has engaged in a course of repeated and willful violations of this article, the court may assess a civil penalty of not more than five thousand dollars (\$5,000). A civil penalty may not be imposed under this subsection:

- (a) for violations of this article occurring more than two (2) years before the action is brought; or
- (b) for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

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(2) If the department determines, after notice and ~~an~~ opportunity ~~for hearing, to be heard~~, that a person has violated this article, the department may, in addition to or instead of all other remedies available under this section, impose upon the person a civil penalty not greater than ten thousand dollars (\$10,000) per violation.

(3) If the department determines, after notice and opportunity for hearing, that a person has violated this article, the department may, in addition to or instead of all other remedies available under this section, order restitution against the person subject to this article for a violation of this article.

SECTION 34. IC 24-4.5-1-102, AS AMENDED BY P.L.90-2008, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 102. ~~Purposes, Rules of Construction~~ — (1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this article are:

- (a) to simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;
- (b) to provide rate ceilings to assure an adequate supply of credit to consumers;
- (c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;
- (d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;
- (e) to permit and encourage the development of fair and economically sound consumer credit practices;
- (f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and
- (g) to make uniform the law including administrative rules among the various jurisdictions.

(3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted pursuant to this article.

(4) To carry out the purposes of this article, the director has the broad administrative authority to:

- (a) administer, interpret, and enforce this article; and**
- (b) adopt rules or issue policies and guidance implementing this article.**

~~(4)~~ **(5)** A reference to a federal law in IC 24-4.5 is a reference to the

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law in effect December 31, ~~2007~~ 2008.

(6) The authority of this article remains in effect, whether a licensee, an individual, or a person subject to this article acts or claims to act under any licensing or registration law of this state, or claims to act without such authority.

~~(5)~~ (7) This article applies to a transaction if the director determines that the transaction:

(a) is in substance a disguised consumer credit transaction; or

(b) involves the application of subterfuge for the purpose of avoiding this article.

A determination by the director under this paragraph must be in writing and shall be delivered to all parties to the transaction. IC 4-21.5-3 applies to a determination made under this paragraph.

SECTION 35. IC 24-4.5-1-108 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 108. ~~Effect of Article on Powers of Organizations~~ = (1) This article prescribes maximum charges for all creditors, except lessors and those excluded (IC 24-4.5-1-202), extending consumer credit, including consumer credit sales (IC 24-4.5-2-104), consumer loans (IC 24-4.5-3-104), and consumer related sales and loans (IC 24-4.5-2-602 and IC 24-4.5-3-602), and displaces existing limitations on the powers of those creditors based on maximum charges.

(2) With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial loan and investment companies, and commercial banks and trust companies, this article displaces existing limitations on their powers based solely on amount or duration of credit.

(3) Except as provided in subsection (1) and IC 24-4.6-1, this article does not displace limitations on powers of credit unions, savings banks, savings or building and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subsections (1) and (2), this article does not displace:

(a) limitations on powers of ~~supervised financial organizations~~ ~~(IC 24-4.5-1-301)~~ **depository institutions (IC 24-4.5-1-301(9))** with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan ~~secured by an interest in land; that is a mortgage transaction,~~ or other similar restrictions designed to protect deposits; or

(b) limitations on powers an organization is authorized to exercise under the laws of this State or the United States.

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SECTION 36. IC 24-4.5-1-109 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 109. All persons licensed on October 1, 1971, under:

- (1) IC 24-5-4 (before its repeal on October 1, 1971);
- (2) IC 28-7-4 (before its repeal on October 1, 1971);
- (3) IC 28-7-2 (before its repeal on October 1, 1971);
- (4) IC 28-5-1-4;

are licensed to make supervised loans under this article, **subject to the renewal provisions contained in this article.** All provisions of this article apply to the persons previously licensed or authorized. The department may deliver evidence of licensing to the persons previously licensed or authorized.

SECTION 37. IC 24-4.5-1-201, AS AMENDED BY P.L.90-2008, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 201. (1) Except as otherwise provided in this section, this article applies to sales, leases, and loans made in this state and to modifications, including refinancings, consolidations, and deferrals, made in this state, of sales, leases, and loans, wherever made. For purposes of this article, the following apply:

- (a) A sale or modification of a sale agreement is made in this state if the buyer's agreement or offer to purchase or to modify is received by the seller or a person acting on behalf of the seller in this state.
- (b) A lease or modification of a lease agreement is made in this state if the lessee's agreement or offer to lease or to modify is received by the lessor or a person acting on behalf of the lessor in this state.
- (c) A loan or modification of a loan agreement is made in this state if a writing signed by the debtor and evidencing the debt is received by the lender or a person acting on behalf of the lender in this state.
- (d) Except as provided in subdivision (e), a sale, lease, or loan transaction occurs in Indiana if a consumer who is a resident of Indiana enters into a consumer sale, lease, or loan transaction with a creditor or a person acting on behalf of the creditor in another state and the creditor or the person acting on behalf of the creditor has advertised or solicited sales, leases, or loans in Indiana by any means, including by mail, brochure, telephone, print, radio, television, the Internet, or electronic means. ~~However, during the period beginning July 1, 2007, and ending June 30, 2009, this subdivision does not apply to an affiliate or a subsidiary of a financial corporation issued a certificate of authority to operate as~~

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1 an industrial loan and investment company under IC 28-5 if all of
2 the following apply:

3 (i) The industrial loan and investment company notifies the
4 department in writing that an affiliate or a subsidiary of the
5 industrial loan and investment company engages or plans to
6 engage in activity involving Indiana residents at an out of state
7 location. The notification required by this clause must list all
8 states other than Indiana in which consumer loans may be
9 made and must describe the nature of the proposed
10 transactions.

11 (ii) The industrial loan and investment company provides
12 written consent allowing the department to consult with and
13 review information provided by other state regulators, as may
14 be requested by the department, concerning the activities
15 identified in clause (i) of any affiliate or subsidiary engaging
16 in consumer lending to Indiana residents in the states
17 identified under clause (i).

18 (iii) The industrial loan and investment company provides
19 written consent allowing the department to inspect or examine
20 all out of state locations in which an affiliate or a subsidiary of
21 the industrial loan and investment company engages in the
22 activities identified under clause (i) for the purpose of
23 investigating the affiliate's or subsidiary's consumer lending
24 practices involving Indiana residents. An inspection or
25 examination performed by the department under this clause is
26 subject to the schedule of fees established by the department
27 under IC 28-11-3-5.

28 (e) A sale, lease, or loan transaction does not occur in Indiana if
29 a consumer who is a resident of Indiana enters into a consumer
30 sale, lease, or loan transaction secured by an interest in land
31 located outside Indiana.

32 For purposes of subdivisions (a) through (c), an offer is received by a
33 creditor or a person acting on behalf of the creditor in Indiana if the
34 offer is physically delivered, or otherwise transmitted or
35 communicated, to a person who has actual or apparent authority to act
36 for the creditor or the person acting on behalf of the creditor in Indiana,
37 regardless of whether approval, acceptance, or ratification by any other
38 agent or representative of the creditor or the person acting on behalf of
39 the creditor in another state is necessary to give legal consequence to
40 the consumer credit transaction.

41 (2) IC 24-4.5-5-101 through IC 24-4.5-5-108 apply to actions or
42 other proceedings brought in this state to enforce rights arising from

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1 consumer credit sales, consumer leases, or consumer loans, or
2 extortionate extensions of credit, wherever made.

3 (3) Except as provided in subsection (2), a sale, lease, loan, or
4 modification thereof, made in another state to a person who was not a
5 resident of this state when the sale, lease, loan, or modification was
6 made, is valid and enforceable in this state according to its terms to the
7 extent that it is valid and enforceable under the laws of the state
8 applicable to the transaction.

9 (4) For the purposes of this article, the residence of a buyer, lessee,
10 or debtor is the address given by the buyer, lessee, or debtor as the
11 buyer's, lessee's, or debtor's residence in any writing or electronic
12 communication made by the buyer, lessee, or debtor in connection with
13 a credit transaction. Until the buyer, lessee, or debtor notifies the
14 creditor or the person acting on behalf of the creditor of a new or
15 different address, the given address is presumed to be unchanged.

16 (5) Notwithstanding other provisions of this section:

17 (a) except as provided in subsection (2), this article does not apply
18 if the buyer, lessee, or debtor is not a resident of this state at the
19 time of a credit transaction and the parties then agree that the law
20 of the buyer's, lessee's, or debtor's residence applies; and

21 (b) this article applies if the buyer, lessee, or debtor is a resident
22 of this state at the time of a credit transaction and the parties then
23 agree that the law of this state applies.

24 (6) Except as provided in subsection (5), the following agreements
25 by a buyer, lessee, or debtor are invalid with respect to consumer credit
26 sales, consumer leases, consumer loans, or modifications thereof, to
27 which this article applies:

28 (a) that the law of another state shall apply;

29 (b) that the buyer, lessee, or debtor consents to the jurisdiction of
30 another state; and

31 (c) that fixes venue.

32 (7) The following provisions of this article specify the applicable
33 law governing certain cases:

34 (a) applicability (IC 24-4.5-6-102) of the provisions on powers
35 and functions of the department; and

36 (b) applicability (IC 24-4.5-6-201) of the provisions on
37 notification and fees.

38 (8) If a creditor or a person acting on behalf of the creditor has
39 violated the provisions of this article that apply to the authority to make
40 consumer loans (IC 24-4.5-3-502), the loan is void and the debtor is not
41 obligated to pay either the principal or loan finance charge, as set forth
42 in IC 24-4.5-5-202.

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SECTION 38. IC 24-4.5-1-202, AS AMENDED BY P.L.181-2006,
SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2009]: Sec. 202. This article does not apply to the following:

(1) Extensions of credit to government or governmental agencies
or instrumentalities.

(2) The sale of insurance by an insurer, except as otherwise
provided in the chapter on insurance (IC 24-4.5-4).

(3) Transactions under public utility, municipal utility, or
common carrier tariffs if a subdivision or agency of this state or
of the United States regulates the charges for the services
involved, the charges for delayed payment, and any discount
allowed for early payment.

(4) The rates and charges and the disclosure of rates and charges
of a licensed pawnbroker established in accordance with a statute
or ordinance concerning these matters.

(5) A sale of goods, services, or an interest in land in which the
goods, services, or interest in land are purchased primarily for a
purpose other than a personal, family, or household purpose.

(6) A loan in which the debt is incurred primarily for a purpose
other than a personal, family, or household purpose.

(7) An extension of credit primarily for a business, a commercial,
or an agricultural purpose.

(8) An installment agreement for the purchase of home fuels in
which a finance charge is not imposed.

(9) Loans made, insured, or guaranteed under a program
authorized by Title IV of the Higher Education Act of 1965 (20
U.S.C. 1070 et seq.).

(10) Transactions in securities or commodities accounts in which
credit is extended by a broker-dealer registered with the Securities
and Exchange Commission or the Commodity Futures Trading
Commission.

~~(11) A loan made:~~

~~(A) in compliance with the requirements of; and~~

~~(B) by a community development corporation (as defined in~~
~~IC 4-4-28-2) acting as a subrecipient of funds from;~~

~~the Indiana housing and community development authority~~
~~established by IC 5-20-1-3.~~

SECTION 39. IC 24-4.5-1-301, AS AMENDED BY P.L.145-2008,
SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2009]: Sec. 301. ~~General Definitions~~ — In addition to
definitions appearing in subsequent chapters in this article:

(1) "Agreement" means the bargain of the parties in fact as found in

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their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(2) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products; "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(3) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(4) "Closing costs" with respect to a ~~debt secured by an interest in land includes:~~ **subordinate lien mortgage transaction includes:**

- (a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;
- (b) fees for preparation of a deed, settlement statement, or other documents;
- (c) escrows for future payments of taxes and insurance;
- (d) fees for notarizing deeds and other documents;
- (e) appraisal fees; and
- (f) credit reports.

(5) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

(6) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(7) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) "Creditor" means a person:

- (a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable by written agreement in more than four (4) installments (not including a down payment); and
- (b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

The term does not include a person described in subsection (34)(a) in a tablefunded transaction. A creditor may be an individual, a limited liability company, a sole proprietorship, a partnership, a

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trust, a joint venture, a corporation, an unincorporated organization, or other form of entity, however organized.

(9) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any credit union.

(10) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

- (a) condominium unit;
- (b) cooperative unit;
- (c) mobile home; or
- (d) trailer;

that is used as a residence.

~~(9)~~ (11) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(12) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(13) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. The term includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(14) "Individual" means a natural person.

~~(10)~~ (15) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

- (a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;
- (b) by the lender's payment or agreement to pay the debtor's obligations; or
- (c) by the lender's purchase from the obligee of the debtor's obligations.

(16) "Licensee" means a person licensed as either a creditor or a mortgage loan originator under this article.

(17) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under this article. For purposes

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of this subdivision, the term "clerical or support duties" may include, after the receipt of an application, the following:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan.

(b) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:

(i) offering or negotiating loan rates or terms; or

(ii) counseling consumers about residential mortgage loan rates or terms.

An individual engaging solely in loan processor or underwriter activities, shall not represent to the public through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(18) "Mortgage loan originator" means an individual who, for compensation or gain, or in the expectation of compensation or gain, engages in taking a residential mortgage loan application or offers to negotiate terms of a residential mortgage loan. The term does not include the following:

(a) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed under this act.

(b) Unless the person or entity is compensated by:

(i) a creditor;

(ii) a loan broker;

(iii) other mortgage loan originator; or

(iv) any agent of the creditor, loan broker, or other mortgage loan originator described in items (i) through (iii);

a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law.

(c) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D)).

(19) "Nationwide Mortgage Licensing System and Registry" or "NMLSR" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

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1 **(20) "Nontraditional mortgage product" means any mortgage**
 2 **product other than a thirty (30) year fixed rate mortgage.**

3 ~~(11)~~ **(21) "Official fees" means:**

4 (a) fees and charges prescribed by law which actually are or will
 5 be paid to public officials for determining the existence of or for
 6 perfecting, releasing, or satisfying a security interest related to a
 7 consumer credit sale, consumer lease, or consumer loan; or

8 (b) premiums payable for insurance in lieu of perfecting a security
 9 interest otherwise required by the creditor in connection with the
 10 sale, lease, or loan, if the premium does not exceed the fees and
 11 charges described in paragraph (a) which would otherwise be
 12 payable.

13 ~~(12)~~ **(22) "Organization" means a corporation, a government or**
 14 governmental subdivision, or an agency, a trust, an estate, a
 15 partnership, a limited liability company, a cooperative, ~~or~~ an
 16 association, *a joint venture, an unincorporated organization, or any*
 17 *other entity, however organized.*

18 ~~(13)~~ **(23) "Payable in installments" means that payment is required**
 19 or permitted by written agreement to be made in more than four (4)
 20 installments not including a down payment.

21 ~~(14)~~ **(24) "Person" includes a natural person or an individual and or**
 22 an organization.

23 ~~(15)~~ **(25) "Person related to" with respect to an individual means:**

24 (a) the spouse of the individual;

25 (b) a brother, brother-in-law, sister, or sister-in-law of the
 26 individual;

27 (c) an ancestor or lineal descendants of the individual or the
 28 individual's spouse; and

29 (d) any other relative, by blood or marriage, of the individual or
 30 the individual's spouse who shares the same home with the
 31 individual.

32 "Person related to" with respect to an organization means:

33 (a) a person directly or indirectly controlling, controlled by, or
 34 under common control with the organization;

35 (b) an officer or director of the organization or a person
 36 performing similar functions with respect to the organization or
 37 to a person related to the organization;

38 (c) the spouse of a person related to the organization; and

39 (d) a relative by blood or marriage of a person related to the
 40 organization who shares the same home with the person.

41 ~~(16)~~ **(26) "Presumed" or "presumption" means that the trier of fact**
 42 must find the existence of the fact presumed, unless and until, evidence

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is introduced which would support a finding of its nonexistence.

(17) (27) "Mortgage transaction" means a ~~transaction in which a first mortgage or a land contract which constitutes a first lien is created or retained against land.~~ **loan or consumer credit sale in which a mortgage or land contract is created or retained against land upon which there is or will be a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.**

(28) "First lien mortgage transaction" means a loan or consumer credit sale in which a first lien mortgage, or a land contract which constitutes a first lien, is created or retained against land upon which there is or will be a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(29) "Subordinate lien mortgage transaction" means a loan or consumer credit sale in which a subordinate lien mortgage, or a land contract which constitutes a subordinate lien, is created or retained against land upon which there is or will be a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(30) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.

(c) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).

(d) Engaging in any activity for which a person is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.

(e) Offering to engage in any activity, or act in any capacity, described in this subsection.

(31) "Registered mortgage loan originator" means any individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is owned and controlled by a

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depository institution and regulated by a federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(b) is registered with, and maintains a unique identifier through, the NMLSR.

~~(18)~~ (32) "Regularly engaged" means a person who extends consumer credit: ~~more than:~~

(a) ~~more than~~ twenty-five (25) times; or

(b) ~~five (5) times at least one (1) time~~ for transactions a transaction secured by a dwelling; in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

~~(19)~~ (33) "Seller credit card" means an arrangement which gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

~~(20)~~ "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:

(a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account; and

(b) subject to supervision by an official or agency of a state or of the United States.

(34) "Tablefunded" means a transaction in which:

(a) a person closes a subordinate lien mortgage transaction in the person's own name as a mortgagee with funds provided by one (1) or more other persons; and

(b) the transaction is assigned simultaneously to the mortgage creditor providing the funding not later than one (1) business day after the funding of the transaction.

(35) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

~~(21)~~ (36) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed

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by a mortgagee to send payments on a loan secured by a mortgage.

~~(22)~~ (37) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

(a) controls;

(b) is controlled by; or

(c) is under common control with;

the person subject to this article.

SECTION 40. IC 24-4.5-2-102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 102. This chapter applies to consumer credit sales, including home solicitation sales, and consumer leases. In addition, IC 24-4.5-2-601 through IC 24-4.5-2-605 apply to consumer related sales. **Licensing under IC 24-4.5-3-502.1 applies to consumer credit sales that are subordinate lien mortgage transactions.**

SECTION 41. IC 24-4.5-2-104 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 104. (1) Except as provided in subsection (2), "consumer credit sale" is a sale of goods, services, or an interest in land in which:

(a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;

(b) the buyer is a person other than an organization;

(c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;

(d) either the debt is payable in installments or a credit service charge is made; and

(e) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars (\$50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

(2) Unless the sale is made subject to this article by agreement (IC 24-4.5-2-601), "consumer credit sale" does not include:

(a) a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement; or

(b) except as provided with respect to disclosure (IC 24-4.5-2-301), debtors' remedies (IC 24-4.5-5-201), providing payoff amounts (IC 24-4.5-2-209), and powers and functions of the department (IC 24-4.5-6-101), a sale of an interest in land which is a **first lien** mortgage transaction. ~~(as defined in IC 24-4.5-1-301(17)).~~

SECTION 42. IC 24-4.5-2-202, AS AMENDED BY P.L.217-2007,

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SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 202. (1) In addition to the credit service charge permitted by IC 24-4.5-2-201 through IC 24-4.5-2-210, a seller may contract for and receive any of the following additional charges in connection with a consumer credit sale:

(a) Official fees and taxes.

(b) Charges for insurance as described in subsection (2).

(c) Notwithstanding provisions of the Federal Consumer Credit Protection Act concerning disclosure, charges for other benefits, including insurance, conferred on the buyer, if the benefits are of value to the buyer and if the charges are reasonable in relation to the benefits, and are excluded as permissible additional charges from the credit service charge. With respect to any additional charge not specifically provided for in this section, to be a permitted charge under this subsection the seller must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the buyer. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the buyer and is reasonable in relation to the benefits.

(d) A charge not to exceed twenty-five dollars (\$25) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the debtor.

(e) Annual participation fees assessed in connection with a revolving charge account. Annual participation fees must:

(i) be reasonable in amount;

(ii) bear a reasonable relationship to the seller's costs to maintain and monitor the charge account; and

(iii) not be assessed for the purpose of circumvention or evasion of this article, as determined by the department.

(2) An additional charge may be made for insurance written in connection with the sale, other than insurance protecting the seller against the buyer's default or other credit loss:

(a) with respect to insurance against loss of or damage to property, or against liability, if the seller furnishes a clear and specific statement in writing to the buyer, setting forth the cost of the insurance if obtained from or through the seller and stating that the buyer may choose the person, subject to the seller's reasonable approval, through whom the insurance is to be obtained; and

(b) with respect to consumer credit insurance providing life,

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1 accident, unemployment or other loss of income, or health
 2 coverage, if the insurance coverage is not a factor in the approval
 3 by the seller of the extension of credit and is clearly disclosed in
 4 writing to the buyer, and if, in order to obtain the insurance in
 5 connection with the extension of credit, the buyer gives specific,
 6 affirmative, written indication of the desire to do so after written
 7 disclosure of the cost.

8 (3) With respect to a ~~debt secured by an interest in land;~~
 9 **subordinate lien mortgage transaction**, the following closing costs,
 10 if the costs are bona fide, reasonable in amount, and not for the purpose
 11 of circumvention or evasion of this article:

- 12 (a) fees for title examination, abstract of title, title insurance,
- 13 property surveys, or similar purposes;
- 14 (b) fees for preparing deeds, mortgages, and reconveyance,
- 15 settlement, and similar documents;
- 16 (c) notary and credit report fees;
- 17 (d) amounts required to be paid into escrow or trustee accounts if
- 18 the amounts would not otherwise be included in the loan finance
- 19 charge; and
- 20 (e) appraisal fees.

21 SECTION 43. IC 24-4.5-2-209, AS AMENDED BY P.L.145-2008,
 22 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2009]: Sec. 209. ~~Right to Prepay~~ = (1) Subject to the
 24 provisions on rebate upon prepayment (IC 24-4.5-2-210), the buyer
 25 may prepay in full the unpaid balance of a consumer credit sale,
 26 refinancing, or consolidation at any time without penalty.

27 (2) At the time of prepayment of a credit sale not subject to the
 28 provisions of rebate upon prepayment (IC 24-4.5-2-210), the total
 29 credit service charge, including the prepaid credit service charge, may
 30 not exceed the maximum charge allowed under this chapter for the
 31 period the credit sale was in effect.

32 (3) The creditor or mortgage servicer shall provide an accurate
 33 payoff of the consumer credit sale to the debtor within ten (10)
 34 calendar days after the creditor or mortgage servicer receives the
 35 debtor's written request for the accurate consumer credit sale payoff
 36 amount. A creditor or mortgage servicer who fails to provide the
 37 accurate consumer credit sale payoff amount is liable for:

- 38 (A) one hundred dollars (\$100) if an accurate consumer credit
- 39 sale payoff amount is not provided by the creditor or mortgage
- 40 servicer within ten (10) calendar days after the creditor or
- 41 mortgage servicer receives the debtor's first written request;
- 42 and

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(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the credit service charge that accrues on the sale from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer credit sale payoff amount is provided;

if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with clause (A).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

(4) As used in this subsection, "mortgage transaction" means a consumer credit sale in which a mortgage, deed of trust, or a land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. **A creditor, servicer, or creditor's agent accepting a short sale may not seek a deficiency judgment or any other damages from the debtor.** As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 44. IC 24-4.5-2-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 301. (1) For purposes

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of this section, "consumer credit sale" includes the sale of an interest in land which is a **first lien** mortgage transaction if the sale is otherwise a consumer credit sale (IC 24-4.5-2-104).

(2) The seller shall disclose to the buyer to whom credit is extended with respect to a consumer credit sale, and the lessor shall disclose to the lessee with respect to a consumer lease, the information required by the Federal Consumer Credit Protection Act.

(3) For purposes of subsection (2), disclosures shall not be required on a consumer credit sale if the transaction is exempt from the Federal Consumer Credit Protection Act.

SECTION 45. IC 24-4.5-2-407 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 407. (1) With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if, in the case of a **security interest in land subordinate lien mortgage transaction**, the debt secured is one thousand dollars (\$1,000) or more, or, in the case of a security interest in goods the debt secured is three hundred dollars (\$300) or more. Except as provided with respect to cross-collateral (IC 24-4.5-2-408), a seller may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.

(2) With respect to a consumer lease, a lessor may not take a security interest in property of the lessee to secure the debt arising from the lease.

(3) A security interest taken in violation of this section is void.

(4) The amounts of one thousand dollars (\$1,000) and three hundred dollars (\$300) in subsection (1) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106).

SECTION 46. IC 24-4.5-3-102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 102. This chapter applies to consumer loans, including ~~regulated and~~ supervised loans. In addition, IC 24-4.5-3-601 through IC 24-4.5-3-605 apply to consumer related loans. **The licensing provisions of this chapter apply to consumer credit sales under IC 24-4.5-2 that are subordinate lien mortgage transactions.**

SECTION 47. IC 24-4.5-3-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 103. ~~Definitions in Chapter~~ — The following definitions apply to this Article:

"Consumer loan" Section 3-104

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1 **"Consumer loan- first lien mortgage**

2 **transaction not included" Section 3-105**

3 "Consumer related loan" Section 3-602 (1)

4 "Lender" Section 3-107 (1)

5 "Loan" Section 3-106

6 "Loan finance charge" Section 3-109

7 ~~"Loan primarily secured by an~~
8 ~~interest in land"~~ ~~Section 3-105~~

9 "Precomputed" Section 3-107 (2)

10 "Principal" Section 3-107 (3)

11 "Revolving loan account" Section 3-108

12 "Supervised lender" Section 3-501 (2)

13 "Supervised loan" 3-501 (1)

14 SECTION 48. IC 24-4.5-3-104 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 104. ~~Except with~~
16 ~~respect to a loan primarily secured by an interest in land~~
17 ~~(IC 24-4.5-3-105); (1) "Consumer loan"~~ is a loan made by a person
18 regularly engaged in the business of making loans in which:

19 (a) the debtor is a person other than an organization;

20 (b) the debt is primarily for a personal, family, or household
21 purpose;

22 (c) either the debt is payable in installments or a loan finance
23 charge is made; and

24 (d) either:

25 (i) the principal does not exceed fifty thousand dollars
26 (\$50,000); or

27 (ii) the debt is secured by an interest in land or by personal
28 property used or expected to be used as the principal dwelling
29 of the debtor.

30 **(2) Except as described in section 105 of this chapter, "consumer**
31 **loan" does not include a first lien mortgage transaction.**

32 SECTION 49. IC 24-4.5-3-105, AS AMENDED BY P.L.90-2008,
33 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2009]: Sec. 105. Unless the loan is made subject to
35 IC 24-4.5-3 by agreement (IC 24-4.5-3-601), and except with respect
36 to disclosure (IC 24-4.5-3-301), debtors' remedies (IC 24-4.5-5-201),
37 providing payoff amounts (IC 24-4.5-3-209), **providing property tax**
38 **information (IC 24-4.5-3-701)**, and powers and functions of the
39 department (IC 24-4.5-6-104), "consumer loan" does not include a ~~loan~~
40 ~~primarily secured by an interest in land which is a first lien mortgage~~
41 ~~transaction. (as defined in IC 24-4.5-1-301(17))~~;

42 SECTION 50. IC 24-4.5-3-209, AS AMENDED BY P.L.145-2008,

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SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 209. ~~Right to Prepay~~ = (1) Subject to the provisions on rebate upon prepayment (IC 24-4.5-3-210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty. With respect to a consumer loan that is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of any amount prepaid within sixty (60) days of the date of the prepayment in full, after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

(a) if the loan is refinanced or consolidated with the same creditor;

(b) for prepayment by proceeds of any insurance or acceleration after default; or

(c) after three (3) years from the contract date.

(2) At the time of prepayment of a consumer loan not subject to the provisions of rebate upon prepayment (IC 24-4.5-3-210), the total finance charge, including the prepaid finance charge but excluding the loan origination fee allowed under IC 24-4.5-3-201, may not exceed the maximum charge allowed under this chapter for the period the loan was in effect. For the purposes of determining compliance with this subsection, the total finance charge does not include the following:

(a) The loan origination fee allowed under IC 24-4.5-3-201.

(b) The debtor paid mortgage broker fee, if any, paid to a person who does not control, is not controlled by, or is not under common control with, the creditor holding the loan at the time a consumer loan is prepaid.

(3) The creditor or mortgage servicer shall provide an accurate payoff of the consumer loan to the debtor within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer loan payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer loan payoff amount is liable for:

(a) one hundred dollars (\$100) if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(b) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the loan from the date the creditor or mortgage servicer receives the first written

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request until the date on which the accurate consumer loan payoff amount is provided;
if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer failed to comply with subdivision (a).

A liability under this subsection is an excess charge under IC 24-4.5-5-202.

(4) As used in this subsection, "mortgage transaction" means a consumer credit loan in which a mortgage, deed of trust, or a land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. This subsection applies to a mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than ten (10) business days after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. **A creditor, servicer, or creditor's agent accepting a short sale may not seek a deficiency judgment or any other damages from the debtor.** As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

SECTION 51. IC 24-4.5-3-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 301. (1) For the purposes of this section, "consumer loan" includes a loan ~~secured primarily by an interest in land which is a~~ **that is a first lien** mortgage transaction if the loan is otherwise a consumer loan (IC 24-4.5-3-104).

(2) The lender shall disclose to the debtor to whom credit is

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extended with respect to a consumer loan the information required by the Federal Consumer Credit Protection Act.

(3) For purposes of subsection (2), disclosures shall not be required on a consumer loan if the transaction is exempt from the Federal Consumer Credit Protection Act.

SECTION 52. IC 24-4.5-3-502, AS AMENDED BY P.L.57-2006, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 502. ~~Authority to Make Consumer Loans - Unless~~ (1) A person ~~that is a supervised financial organization or a collection agency licensed under IC 25-11-1 or has first obtained a license from the department; the person shall not regularly engage in this state in any of the following:~~

(1) Making consumer loans;

(2) Taking assignments of consumer loans;

(3) Undertaking direct collection of payments from or enforcement of rights against debtors arising from consumer loans. However, a person may collect and enforce for three (3) months without a license if the person promptly applies for a license and the person's application has not been denied.

(a) depository institution;

(b) subsidiary that is owned and controlled by a depository institution; or

(c) credit union organization;

may engage in the making of consumer loans that are not mortgage transactions without obtaining a license under this article.

(2) A collection agency licensed under IC 25-11-1 may engage in:

(a) taking assignments of consumer loans in Indiana; and

(b) undertaking direct collection of payments from or enforcement of rights in Indiana against debtors arising from consumer loans;

without obtaining a license under this article.

(3) A person that does not qualify under subsection (1) or (2) shall acquire and retain a license under this section in order to regularly engage in Indiana in the following actions with respect to consumer loans that are not mortgage transactions:

(a) The making of consumer loans.

(b) Taking assignments of consumer loans in Indiana.

(c) Undertaking direct collection of payments from or enforcement of rights in Indiana against debtors arising from consumer loans.

SECTION 53. IC 24-4.5-3-502.1 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2009]: Sec. 502.1. (1) Unless a person:

- (a) is a depository institution;
- (b) is a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency;
- (c) is an institution regulated by the Farm Credit Administration; or
- (d) has first obtained, and subsequently retains, a license from the department;

the person shall not regularly engage in Indiana as a creditor or, after December 31, 2009, a mortgage loan originator in subordinate lien mortgage transactions, take assignments in Indiana of subordinate lien mortgage transactions, or undertake in the direct collection of payments from or enforcement of rights against debtors in Indiana arising from subordinate lien mortgage transactions. However, a person may collect and enforce for three (3) months without a license if the person promptly applies for a license and the person's application has not been denied.

(2) An individual who conducts a mortgage loan originator business as a sole proprietor is required to obtain only a creditor's license under this article. However, the individual must meet the background, education, and testing requirements prescribed for a mortgage loan originator.

(3) Each licensed creditor and each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the NMLSR. Each licensed mortgage loan originator must be employed by, and associated with, a licensed creditor in the NMLSR in order to originate loans.

(4) Applicants for a license must apply for a license under this chapter in a form prescribed by the director. Each form:

- (a) must contain content as set forth by rule, instruction, or procedure of the director; and
- (b) may be changed or updated as necessary by the director to carry out the purposes of this article.

(5) In order to fulfill the purposes of this article, the director may establish relationships or contracts with the NMLSR or other entities designated by the NMLSR to:

- (a) collect and maintain records; and
- (b) process transaction fees or other fees;

related to licensees or other persons subject to this article.

(6) For the purpose of participating in the NMLSR, the director

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may:

- (a) waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this article; and
- (b) establish new requirements as reasonably necessary to participate in the NMLSR.

SECTION 54. IC 24-4.5-3-503, AS AMENDED BY P.L.90-2008, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 503. ~~License to Make Consumer Loans~~—(1) The department shall receive and act on all applications for licenses to make consumer loans. Applications must be as prescribed by the director of the department of financial institutions.

(2) A license shall not be issued unless the department finds that the **professional training and experience**, financial responsibility, character, and fitness of:

- (a) the applicant and any significant affiliate of the applicant;
- (b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and
- (c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant; are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article.

(3) The director is entitled to request evidence of compliance with this section at:

- (a) the time of application;
- (b) the time of renewal of a license; or
- (c) any other time considered necessary by the director.

(4) Evidence of compliance with this section **concerning a person licensed under section 502 of this chapter** may include **and under section 502.1 of this chapter must include:**

- (a) criminal background checks **as described in section 503.1 of this chapter**, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation, for any individual described in subsection (2);
- (b) credit histories **as described in section 503.2 of this chapter;** and
- (c) **prelicensing education requirements as described in section 503.3 of this chapter, for all:**
 - (i) mortgage loan originators; and
 - (ii) other individuals described in subsection (2) as required by the director;

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(d) prelicensing written test requirements as described in section 503.4 of this chapter, for all:

(i) mortgage loan originators; and

(ii) other individuals described in subsection (2) as required by the director;

(e) surety bond requirements as described in section 503.6 of this chapter;

(f) a review of licensure actions in Indiana and other states; and

(g) other background checks considered necessary by the director.

If the director requests a national criminal history background check under subdivision (a) for an individual described in subsection (2), the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (3). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

(5) An individual who has had a mortgage loan originator license revoked in any state may not be licensed as a mortgage loan originator under this article. The individual must submit personal history and experience information in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR and the director to obtain information related to any administrative, civil, or criminal findings by a governmental jurisdiction.

(6) For purposes of this section and in order to reduce the points of contact that the director may have to maintain under this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source as directed by the director.

(7) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(8) Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license as

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provided in IC 4-21.5.

~~(7)~~ **(9)** The applicant shall pay the following fees at the time designated by the department:

(a) An initial license fee as established by the department under IC 28-11-3-5.

(b) ~~An initial investigation fee~~ **Examination fees** as established by the department under IC 28-11-3-5.

(c) An annual renewal fee as established by the department under IC 28-11-3-5.

~~(8)~~ **(10)** A fee as established by the department under IC 28-11-3-5 may be charged for each day the annual renewal fee under subsection ~~(7)(c)~~ **(9)(c)** is delinquent.

~~(9)~~ The applicant may deduct the fees required under subsection ~~(7)(a) through (7)(c)~~ from the filing fees paid under IC 24-4.5-6-203.

(11) The licensee may deduct the fees required under subsection (9)(a) and (9)(c) from the filing fees paid under IC 24-4.5-6-203.

~~(10)~~ **(12)** A loan license issued under this section is not assignable or transferable.

~~(11)~~ Subject to subsection ~~(12)~~, the director may designate an automated central licensing system and repository; operated by a third party, to serve as the sole entity responsible for:

(a) processing applications and renewals for licenses under this section; and

(b) performing other services that the director determines are necessary for the orderly administration of the department's licensing system.

~~(12)~~ The director's authority to designate an automated central licensing system and repository under subsection ~~(11)~~ is subject to the following:

(a) The director or the director's designee may not require any person exempt from licensure under this article; or any employee or agent of an exempt person; to:

(i) submit information to; or

(ii) participate in;

the automated central licensing system and repository.

(b) Information stored in the automated central licensing system and repository is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:

(i) obtain information from the automated central licensing system and repository; unless the person is authorized to do so by statute;

(ii) initiate any civil action based on information obtained

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from the automated central licensing system and repository if the information is not otherwise available to the person under any other state law; or

(iii) initiate any civil action based on information obtained from the automated central licensing system and repository if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(c) Documents, materials, and other forms of information in the control or possession of the automated central licensing system and repository that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the automated central licensing system and repository;

are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director or the director's designee may use the documents, materials, or other information available to the director or the director's designee in furtherance of any action brought in connection with the director's duties under this article.

(d) Disclosure of documents, materials, and information:

(i) to the director or the director's designee; or

(ii) by the director or the director's designee;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(e) Information provided to the automated central licensing system and repository is subject to IC 4-1-11.

(f) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or proceeding;

or

(iii) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

(g) The director may require a licensee required to submit information to the automated central licensing system and repository to pay a processing fee considered reasonable by the director.

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SECTION 55. IC 24-4.5-3-503.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 503.1. (1) When the director requests a national criminal history background check under section 503(4)(a) of this chapter for an individual described in section 503(2) of this chapter, the director shall require the individual to submit fingerprints to the department, state police department, or NMLSR, as directed, at the time evidence of compliance is requested under section 503(3) of this chapter. The individual to whom the request is made shall pay any fees or costs associated with processing and evaluating the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.**

(2) For purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any governmental agency.

(3) If the individual:

(a) has been convicted of or pleaded guilty or nolo contendere to a felony during the seven (7) year period preceding the date of application; or

(b) at any time preceding the date of application, has been convicted of or pleaded guilty or nolo contendere to a felony involving an act of fraud, dishonesty, breach of trust, or money laundering;

the individual may not be approved for licensing as a mortgage loan originator.

SECTION 56. IC 24-4.5-3-503.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 503.2. (1) When the director requests a credit report for an individual described in section 503(2) of this chapter, the individual to whom the request is made shall pay any fees or costs associated with procuring the report.**

(2) The individual must submit personal history and experience information in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR or the director to obtain an independent credit report obtained from a consumer

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reporting agency described in Section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)).

(3) The director may consider one (1) or more of the following when determining if an individual has demonstrated financial responsibility:

- (a) Bankruptcies filed within the last ten (10) years.
- (b) Current outstanding judgments, except judgments solely as a result of medical expenses.
- (c) Current outstanding tax liens or other government liens or filings.
- (d) Foreclosures within the past three (3) years.
- (e) A pattern of serious delinquent accounts within the past three (3) years.

SECTION 57. IC 24-4.5-3-503.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 503.3. (1) To meet the prelicensing education requirements referred to in section 503(4)(c) of this chapter, a person must complete at least twenty (20) hours of education approved in accordance with subsection (2), which must include at least the following:

- (a) Three (3) hours of federal law and regulations.
- (b) Three (3) hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.
- (c) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) For purposes of subsection (1), prelicensing education courses shall be reviewed and approved by the NMLSR based upon reasonable standards. Review and approval of a prelicensing education course must include review and approval of the course provider.

(3) The NMLSR may approve a prelicensing education course that is provided by an employer of the applicant or an entity that is affiliated with the applicant by an agency contract or any subsidiary or affiliate of the employer or entity.

(4) Prelicensing education may be offered either in a classroom, online, or by any other means approved by the NMLSR.

(5) The prelicensing education requirements approved by the NMLSR in subsection (1) for any state shall be accepted as completion of prelicensing education requirements in Indiana.

(6) A mortgage loan originator applying for a license under this article, who previously held a mortgage loan originator license, must prove that the mortgage loan originator has completed all the

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1 continuing education requirements for the year in which the license
 2 was last held or complete the prelicensing education requirements
 3 established in subsection (1).

4 SECTION 58. IC 24-4.5-3-503.4 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2009]: **Sec. 503.4. (1)** To meet the written test
 7 requirement referred to in section 503(4)(d) of this chapter, an
 8 individual must pass, in accordance with the standards established
 9 under this section, a qualified written test developed by the
 10 NMLSR and administered by a test provider approved by the
 11 NMLSR based upon reasonable standards.

12 (2) A written test shall not be treated as a qualified written test
 13 for purposes of subsection (1) unless the test adequately measures
 14 the applicant's knowledge and comprehension in appropriate
 15 subject areas, including:

- 16 (a) ethics;
- 17 (b) federal law and regulation pertaining to mortgage
- 18 origination;
- 19 (c) state law and regulation pertaining to mortgage
- 20 origination; and
- 21 (d) federal and state law and regulation, including instruction
- 22 on fraud, consumer protection, the nontraditional mortgage
- 23 marketplace, and fair lending issues.

24 (3) This section does not prohibit a test provider approved by
 25 the NMLSR from providing a test at the location of:

- 26 (a) the employer of the applicant;
- 27 (b) any subsidiary or affiliate of the employer of the
- 28 applicant; or
- 29 (c) any entity with which the applicant holds an exclusive
- 30 arrangement to conduct the business of a mortgage loan
- 31 originator.

32 (4) The following are the standards for demonstrating minimum
 33 competence with respect to the testing requirements:

- 34 (a) **Passing Score** - An individual shall not be considered to
- 35 have passed a qualified written test unless the individual
- 36 achieves a test score of not less than seventy-five percent
- 37 (75%) correct answers to questions.
- 38 (b) **Initial Retests** - An individual may retake a test three (3)
- 39 consecutive times with each consecutive test taken at least
- 40 thirty (30) days after the preceding test.
- 41 (c) **Subsequent Retests** - After failing three (3) consecutive
- 42 tests, an individual must wait at least six (6) months before

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1 taking the test again.

2 (d) Retest After Lapse of License - A licensed mortgage loan
3 originator who fails to maintain a valid license for a period of
4 at least five (5) years must retake the test to be issued a new
5 license, not taking into account any time during which the
6 individual is a registered mortgage loan originator.

7 SECTION 59. IC 24-4.5-3-503.6 IS ADDED TO THE INDIANA
8 CODE AS A NEW SECTION TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2009]: Sec. 503.6. (1) Each creditor and
10 mortgage loan originator must be covered by a surety bond in
11 accordance with this section. If a mortgage loan originator is an
12 employee or exclusive agent of a person subject to this article, the
13 surety bond of the person subject to this article may be used
14 instead of the mortgage loan originator's surety bond requirement.

15 (2) A surety bond:

- 16 (a) must provide coverage for each creditor mortgage loan
17 originator in an amount as prescribed in subsection (4); and
18 (b) must be in a form as prescribed by the director.

19 (3) The director may adopt rules with respect to the
20 requirements for surety bonds as necessary to accomplish the
21 purposes of this article.

22 (4) The penal sum of the surety bond shall be maintained in an
23 amount that reflects the dollar amount of loans originated as
24 determined by the director.

25 (5) If an action is commenced on a licensee's bond, the director
26 may require the filing of a new bond.

27 (6) A licensee shall file a new surety bond immediately upon
28 recovery of any action on the licensee's surety bond.

29 SECTION 60. IC 24-4.5-3-503.7 IS ADDED TO THE INDIANA
30 CODE AS A NEW SECTION TO READ AS FOLLOWS
31 [EFFECTIVE JULY 1, 2009]: Sec. 503.7. (1) Subject to subsection
32 (6), the director shall designate the NMLSR to serve as the sole
33 entity responsible for:

- 34 (a) processing applications and renewals for licenses under
35 this section;
36 (b) issuing unique identifiers for licensees under this article;
37 and
38 (c) performing other services that the director determines
39 necessary for the orderly administration of the department's
40 licensing system under this article.

41 (2) Subject to the confidentiality provisions contained in
42 IC 5-14-3, this section, and IC 28-1-2-30, the director shall

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regularly report significant or recurring violations of this article to the NMLSR.

(3) Subject to the confidentiality provisions contained in IC 5-14-3, this section, and IC 28-1-2-30, the director may report complaints received regarding licensees under this article to the NMLSR.

(4) The director shall report publicly adjudicated licensure actions to the NMLSR.

(5) The director shall establish a process whereby licensees may challenge information reported to the NMLSR by the department.

(6) The director's authority to designate the NMLSR under subsection (1) is subject to the following:

(a) Except with respect to privately insured state chartered credit unions that must comply with the system of mortgage loan originator registration developed by the Federal Financial Institutions Examinations Council under Section 1507 of the Safe and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE"), the director or the director's designee may not require any person exempt from licensure under this article, or any employee or agent of an exempt person, to:

(i) submit information to; or

(ii) participate in;

the NMLSR.

(b) Information stored in the NMLSR is subject to the confidentiality provisions of IC 28-1-2-30 and IC 5-14-3. A person may not:

(i) obtain information from the NMLSR unless the person is authorized to do so by statute;

(ii) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or

(iii) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.

(c) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under IC 28-1-2-30 and that are:

(i) furnished by the director, the director's designee, or a licensee; or

(ii) otherwise obtained by the NMLSR;

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are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other information available to the director in furtherance of any action brought in connection with the director's duties under this article.

(d) Disclosure of documents, materials, and information:

(i) to the director; or

(ii) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(e) Information provided to the NMLSR is subject to IC 4-1-11.

(f) This subsection does not limit or impair a person's right to:

(i) obtain information;

(ii) use information as evidence in a civil action or proceeding; or

(iii) use information to initiate a civil action or proceeding; if the information may be obtained from the director or the director's designee under any law.

(g) Except as otherwise provided in the federal Housing and Economic Recovery Act of 2008, Public Law 110-289, Section 1512, the requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, shall continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(h) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators or other associations representing governmental agencies as established by rule or order of the director.

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(i) Information or material that is subject to a privilege or confidentiality under subdivision (g) shall not be subject to:

(i) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) subpoena, discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the NMLSR with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(j) IC 5-14-3 relating to the disclosure of confidential supervisory information or any information or material described in subdivision (g) that is inconsistent with subdivision (g) shall be superseded by the requirements of this section.

(k) This section does not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against persons licensed under section 502.1 of this chapter and described in section 503(2) of this chapter that are included in the NMLSR for access by the public.

(l) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director.

SECTION 61. IC 24-4.5-3-503.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 503.8. (1) The minimum standards for license renewal for a creditor include the following:

(a) If the creditor is licensed under section 502 of this chapter, the creditor has:

- (i) paid all required fees for renewal of the license; and
- (ii) filed all reports and information required by the director.

(b) If the creditor is licensed under section 502.1 of this chapter, the following:

- (i) The creditor has continued to meet the surety bond requirement under section 503.6 of this chapter.
- (ii) The creditor has filed the creditor's annual call report in a manner that satisfies section 505(4) of this chapter.
- (iii) The creditor has paid all required fees for renewal of

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the license.

(iv) Individuals described in section 503(2) of this chapter, as determined by the director, have satisfied the annual continuing education requirements described in section 503.3 of this chapter.

(v) The creditor and individual described in section 503(2) of this chapter continue to meet all the standards for licensing contained in section 503 of this chapter.

(vi) The creditor has filed all reports and information required by the director.

(2) A license issued by the department authorizing a person to engage as a creditor in consumer loans or consumer credit sales under this article may be suspended by the department if the person fails to:

(a) file any renewal form required by the department; or

(b) pay any license renewal fee described under section 503(9)(c) of this chapter;

not later than sixty (60) days after the due date.

(3) A person whose license is suspended under this section may do either of the following:

(a) Pay all delinquent fees and apply for reinstatement of the license.

(b) Appeal the suspension to the department for an administrative review under IC 4-21.5-3. The license remains in force pending the decision resulting from the hearing under IC 4-21.5-3.

SECTION 62. IC 24-4.5-3-503.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 503.9. (1) The minimum standards for license renewal for mortgage loan originators include the following:

(a) The mortgage loan originator continues to meet the minimum standards for license issuance under section 503 of this chapter.

(b) The mortgage loan originator has satisfied the annual continuing education requirements described in section 504.5 of this chapter.

(c) The mortgage loan originator has paid all required fees and filed all reports and information required by the director for renewal of the license.

(2) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire. The

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1 **director may adopt procedures for the reinstatement of expired**
 2 **licenses consistent with the standards established by the NMLSR.**

3 SECTION 63. IC 24-4.5-3-504, AS AMENDED BY P.L.90-2008,
 4 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2009]: Sec. 504. ~~Revocation or Suspension of License~~ (1)
 6 The department may issue to a person licensed to make consumer loans
 7 **or to engage in consumer credit sales that are mortgage**
 8 **transactions** an order to show cause why the license should not be
 9 revoked or suspended for a period determined by the department. The
 10 order shall state the place and time for a meeting with the department
 11 that is no less than ten (10) days from the date of the order. After the
 12 meeting, the department shall revoke or suspend the license if the
 13 department finds that:

14 (a) the licensee has repeatedly and willfully violated this article
 15 or any rule or order lawfully made pursuant to this article;

16 (b) the licensee has repeatedly and willfully violated **any other**
 17 **state or federal consumer credit laws, rules, or regulations; or**

18 **(c) the licensee does not meet the licensing qualifications**
 19 **under section 503 of this chapter; or**

20 ~~(c)~~ (d) facts or conditions exist which would clearly have justified
 21 the department in refusing to grant a license had these facts or
 22 conditions been known to exist at the time the application for the
 23 license was made.

24 (2) Except as provided in ~~section 503.5~~ **section 503.8(2) and**
 25 **503.8(3)** of this chapter, no revocation or suspension of a license is
 26 lawful unless prior to institution of proceedings by the department
 27 notice is given to the licensee of the facts or conduct which warrant the
 28 intended action, and the licensee is given an opportunity to show
 29 compliance with all lawful requirements for retention of the license.

30 (3) If the department finds that probable cause for revocation of a
 31 license exists and that enforcement of this article requires immediate
 32 suspension of the license pending investigation, the department may,
 33 after a hearing upon five (5) days written notice to the licensee, enter
 34 an order suspending the license for not more than thirty (30) days.

35 (4) Whenever the department revokes or suspends a license, the
 36 department shall enter an order to that effect and forthwith notify the
 37 licensee of the revocation or suspension. Within five (5) days after the
 38 entry of the order the department shall deliver to the licensee a copy of
 39 the order and the findings supporting the order.

40 (5) Any person holding a license to make consumer loans may
 41 relinquish the license by notifying the department in writing of its
 42 relinquishment, but this relinquishment shall not affect the person's

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liability for acts previously committed.

(6) If the director determines it is in the public interest, the director may pursue revocation of a license of a licensee that has relinquished the license under subsection (5).

~~(6)~~ **(7)** No revocation, suspension, or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any debtor.

~~(7)~~ **(8)** The department may reinstate a license ~~or~~ terminate a suspension ~~or grant a new~~ **of a** license to a person whose license has been ~~revoked or~~ suspended if **the director determines that, at the time the determination is made,** no fact or condition then exists which clearly would have justified the department in refusing to grant a license.

~~(8)~~ **(9)** If the director:

(a) has just cause to believe an emergency exists from which it is necessary to protect the interests of the public; or

(b) determines that the license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;

the director may proceed with the revocation of the license under IC 4-21.5-3-6.

SECTION 64. IC 24-4.5-3-504.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 504.5. (1) To meet the annual continuing education requirements referred to in sections 503.8 and 503.9 of this chapter, licensed mortgage loan originators and other individuals as determined by the director, must complete at least eight (8) hours of education approved in accordance with subsection (2), which must include at least the following:**

(a) Three (3) hours of federal law and regulations.

(b) Two (2) hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

(c) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) For purposes of subsection (1), continuing education courses shall be reviewed, and approved by the NMLSR based upon reasonable standards. Review and approval of a continuing education course must include review and approval of the course provider.

(3) The NMLSR may approve an education course that is provided by a creditor, an employer of the mortgage loan originator, or an entity that is affiliated with the creditor or mortgage loan originator by an agency contract, or any subsidiary

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or affiliate of the employer or entity.

(4) Continuing education may be offered either in a classroom, online, or by any other means approved by the NMLSR.

(5) An individual subject to these continuing education requirements;

(a) except for section 503.9(2) of this chapter and subsection (9), may receive credit for a continuing education course only in the year in which the course is taken; and

(b) may not take the same approved course in the same year or successive years to meet the annual requirements for continuing education.

(6) An individual subject to the continuing education requirements under this section who is an approved instructor of approved continuing education courses may receive credit for the individual's own annual continuing education requirement at the rate of two (2) hours credit for every one (1) hour taught.

(7) A person who has successfully completed the education requirements approved by the NMLSR in subsection (1) for any state shall be accepted as completion of the continuing education requirements in Indiana.

(8) A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held before issuance of a new or renewed license.

(9) A person meeting the requirements of section 503.9(1)(a) and 503.9(1)(c) of this chapter may make up any deficiency in continuing education as established by rule of the department or policy of the director.

SECTION 65. IC 24-4.5-3-505, AS AMENDED BY P.L.90-2008, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 505. ~~Records; Annual Reports~~—(1) Every ~~licensee~~ **creditor** shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the department to determine whether the licensee is complying with the provisions of this article. The record keeping system of a licensee shall be sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever located. The records pertaining to any loan shall be retained for two (2) years after making the final entry relating to the loan, but in the case of a revolving loan

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account the two (2) years is measured from the date of each entry. A person licensed or required to be licensed under this chapter is subject to IC 28-1-2-30.5 with respect to any records maintained by the person.

(2) The unique identifier of any person originating a residential mortgage loan must be clearly shown on all residential mortgage loan application forms and any other documents as required by the director.

(3) Every licensee that engages in mortgage transactions shall use automated examination and regulatory software designated by the director, including third party software. Use of the software consistent with guidance and policies issued by the director is not a violation of IC 28-1-2-30.

(4) Each creditor licensed by the department that engages in mortgage transactions shall submit to the NMLSR a call report, which shall be in the form and must contain information the NMLSR requires.

~~(2)~~ **(5) Every licensee creditor** shall file with the department a composite report as required by the department, but not more frequently than annually, in the form prescribed by the department relating to all consumer loans made by the licensee. The department shall consult with comparable officials in other states for the purpose of making the kinds of information required in the reports uniform among the states. Information contained in the reports shall be confidential and may be published only in composite form. The department may impose a fee in an amount fixed by the department under IC 28-11-3-5 for each day that a ~~licensee~~ **creditor** fails to file the report required by this subsection.

~~(3)~~ **(6) Every licensee A licensed creditor** shall file notification with the department if the licensee:

- (a) has a change in name, address, or principals;
- (b) opens a new branch, closes an existing branch, or relocates an existing branch;
- (c) files for bankruptcy or reorganization; or
- (d) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensee's activities; not later than thirty (30) days after the date of the event described in this subsection.

(7) A licensed mortgage loan originator shall file notification with the department if the licensed mortgage loan originator:

- (a) files for bankruptcy or is served in a foreclosure action; or**
- (b) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the mortgage**

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1 **loan originator's activities;**
 2 **not later than thirty (30) days after the date of the event described**
 3 **in this subsection.**

4 ~~(4)~~ **(8)** Every licensee shall file notification with the department if
 5 an individual described in section 503(2)(b) or 503(2)(c) of this
 6 chapter: **the licensee or a key officer or director of the licensee:**

7 (a) is under indictment for a felony ~~involving fraud, deceit, or~~
 8 ~~misrepresentation~~ under the laws of Indiana or any other
 9 jurisdiction; or

10 (b) has been convicted of or pleaded guilty or nolo contendere to
 11 a felony ~~involving fraud, deceit, or misrepresentation~~ under the
 12 laws of Indiana or any other jurisdiction;
 13 not later than thirty (30) days after the date of the event described in
 14 this subsection.

15 SECTION 66. IC 24-4.5-3-505.5 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 505.5. (a) As used in
 17 this section, "automated loan machine" means an unmanned machine
 18 that performs routine lending functions.

19 (b) A ~~licensee~~ **creditor** may make loans through an automated loan
 20 machine at an offsite location if the ~~licensee~~ **creditor:**

21 (1) notifies the department in writing of the existence and location
 22 of the automated loan machine;

23 (2) maintains at a location licensed or approved by the department
 24 the books, accounts, records, and files concerning transactions
 25 performed through the automated loan machine; and

26 (3) posts at the offsite location where the automated loan machine
 27 is located the:

28 (A) address where the books, accounts, records and files are
 29 located; and

30 (B) telephone number at which the ~~licensee~~ **creditor** may be
 31 contacted.

32 SECTION 67. IC 24-4.5-3-512 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 512. ~~Conduct of~~
 34 ~~Business Other than Making Loans~~ — A ~~licensee~~ **creditor** may carry
 35 on other business at a location where ~~he~~ **the creditor** makes consumer
 36 loans unless ~~he~~ **the creditor** carries on other business for the purpose
 37 of evasion or violation of this Article.

38 SECTION 68. IC 24-4.5-5-201 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 201. For purposes of
 40 the provisions on civil liability for violation of disclosure provisions
 41 (IC 24-4.5-5-203) and on debtor's right to rescind certain transactions
 42 (IC 24-4.5-5-204):

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(1) consumer credit sale includes a sale ~~of an interest in land which is a mortgage transaction that is a first lien mortgage transaction~~ if the sale is otherwise a consumer credit sale (IC 24-4.5-2-104); and

(2) consumer loan includes a loan ~~primarily secured by an interest in land which is a mortgage transaction that is a first lien mortgage transaction~~ if the loan is otherwise a consumer loan (IC 24-4.5-3-105).

SECTION 69. IC 24-4.5-5-301 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 301. (1) A lender who knowingly makes charges in excess of those permitted by the provisions of this article commits a Class A misdemeanor.

(2) A person ~~other than a supervised financial organization~~, who knowingly engages in the business of making consumer loans without a license in violation of the provisions of this article applying to authority to make consumer loans (IC 24-4.5-3-502 **and IC 24-4.5-3-502.1**) commits a Class A misdemeanor.

(3) A person who knowingly:

- (a) engages in the business of making consumer credit sales, consumer leases, or consumer loans, or of taking assignments of rights against debtors; and
- (b) undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of this article concerning notification (IC 24-4.5-6-202) or payment of fees (IC 24-4.5-6-203);

commits a Class A infraction.

SECTION 70. IC 24-4.5-6-102 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 102. (a) IC 24-4.5-6-101 through IC 24-4.5-6-117 apply to persons who in this state:

- (1) make or solicit consumer credit sales, consumer leases, consumer loans, consumer related sales (IC 24-4.5-2-602) and consumer related loans (IC 24-4.5-3-602); or
- (2) directly collect payments from or enforce rights against debtors arising from sales, leases, or loans specified in subsection (1), wherever they are made.

(b) For purposes of IC 24-4.5-6-101 through IC 24-4.5-6-117:

- (1) "Consumer credit sale" includes a sale ~~of an interest in land which is a mortgage transaction that is a first lien mortgage transaction~~ if the sale is otherwise a consumer credit sale.
- (2) "Consumer loan" includes a loan ~~secured by an interest in land which is a mortgage transaction that is a first lien mortgage~~

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transaction if the loan is otherwise a consumer loan.

SECTION 71. IC 24-4.5-6-103.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 103.5. ~~Director~~ = "Director" means the director of the department of financial institutions **or the director's designee.**

SECTION 72. IC 24-4.5-6-105 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 105. ~~Administrative Powers with Respect to Supervised Financial Organizations~~ = (1) With respect to ~~supervised financial organizations~~, **depository institutions**, the powers of examination and investigation (~~IC 24-4.5-3-506~~ and (IC 24-4.5-6-106) and administrative enforcement (IC 24-4.5-6-108) shall be exercised by the department. The department may, at its discretion, accept any examination of any financial institution made by a federal authority in lieu of the examination made under the provisions of this Article. All other powers of the department under this Article may be exercised by ~~him~~ **the director** with respect to a ~~supervised financial organization~~ **depository institution.**

(2) If the department receives a complaint or other information concerning noncompliance with this Article by a ~~supervised financial organization~~, **he depository institution**, **the director** shall inform the official or agency having supervisory authority over the organization concerned. The department may request information about ~~supervised financial organizations~~ **depository institutions** from the officials or agencies supervising them.

(3) The department and any official or agency of this state having supervisory authority over a ~~supervised financial organization~~ **depository institution** are authorized and directed to consult and assist one another in maintaining compliance with this Article. They may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action.

SECTION 73. IC 24-4.5-6-106, AS AMENDED BY P.L.217-2007, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 106. ~~Examinations~~ = (1) In administering this article and in order to determine whether the provisions of this article are being complied with by persons engaging in acts subject to this article, the department may examine the records of persons and may make investigations of persons as may be necessary to determine compliance. Records subject to examination under this section include the following:

(a) Training, operating, and policy manuals.

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(b) Minutes of:

(i) management meetings; and

(ii) other meetings.

(c) Other records that the department determines are necessary to perform its investigation or examination.

The department may also administer oaths or affirmations, subpoena witnesses, **and compel their the attendance of witnesses, including officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person subject to this article. The department may also** adduce evidence, and require the production of any matter which is relevant to the investigation. The department shall determine the sufficiency of the records maintained and whether the person has made the required information reasonably available. The records pertaining to any transaction subject to this article shall be retained for two (2) years after making the final entry relating to the consumer credit transaction, but in the case of a revolving loan account or revolving charge account, the two (2) years is measured from the date of each entry.

(2) The department's examination and investigatory authority under this article includes the following:

(a) The authority to require a creditor to refund overcharges resulting from the creditor's noncompliance with the terms of a first lien mortgage transaction.

(b) The authority to require a creditor to comply with the penalty provisions set forth in IC 24-4.4-2-201.

(c) The authority to investigate complaints filed with the department by debtors.

~~(2)~~ **(3) If the department:**

(a) investigates; or

(b) examines the books and records of;

a person that is subject to IC 24-4.5-6-201, IC 24-4.5-6-202, and IC 24-4.5-6-203, the person shall pay all reasonably incurred costs of the investigation or examination in accordance with the fee schedule adopted by the department under IC 28-11-3-5. However, the person is liable for the costs of an investigation or examination under this subsection only to the extent that the costs exceed the amount of the filing fees paid most recently under IC 24-4.5-6-203. Any costs required to be paid under this subsection shall be paid not later than sixty (60) days after the person receives a notice from the department of the costs being assessed. The department may impose a fee, in an amount fixed by the department under IC 28-11-3-5, for each day that

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the assessed costs are not paid, beginning on the first day after the sixty (60) day period described in this subsection.

~~(3)~~ **(4)** The department shall be given free access to the records wherever located. **In making any examination or investigation authorized by this article, the director may control access to any documents and records of the licensee or person under examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where the documents are usually kept. During the period of control, the licensee or person may not remove or attempt to remove any of the documents and records except under a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensee or person have been, or are, at risk of being altered or destroyed for purposes of concealing a violation of this article, the licensee or person being examined or investigated is entitled to access to the documents or records as necessary to conduct the licensee's or person's ordinary business affairs.** If the person's records are located outside Indiana, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or its representative to examine them where they are maintained. The department may designate comparable officials of the state in which the records are located to inspect them on behalf of the department.

~~(4)~~ **(5)** Upon **a person's** failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all **affected** persons, ~~affected thereby~~, the department may apply to any civil court **with jurisdiction** for an order compelling compliance.

~~(5)~~ **(6)** The department shall not make public the name or identity of a person whose acts or conduct the department investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this article.

SECTION 74. IC 24-4.5-6-106.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 106.5. To carry out the purposes of this section, the director may:**

- (a) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;**
- (b) enter into agreements or relationships with other**

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government officials or regulatory associations to improve efficiencies and reduce regulatory burden by sharing:

(i) resources;

(ii) standardized or uniform methods or procedures; and

(iii) documents, records, information, or evidence obtained under this section;

(c) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate a licensee, an individual, or a person subject to this article;

(d) accept and rely on examination or investigation reports made by other government officials, in or outside Indiana; or

(e) accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this article in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director.

SECTION 75. IC 24-4.5-6-107 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 107. Except as otherwise provided, IC 4-21.5-3 governs all agency action taken by the department under ~~IC 24-4.5-6~~ **this chapter** or IC 24-4.5-3-501 through IC 24-4.5-3-513. **All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 shall be held in Marion County, Indiana, at a location designated by the director.** The provisions of IC 4-22-2 prescribing procedures for the adoption of rules by agencies shall apply to the adoption of rules by the department of financial institutions under this article. However, if the department declares an emergency in the document containing the rule, it may adopt rules permitted by ~~IC 24-4.5-6~~ **this chapter** under IC 4-22-2-37.1.

SECTION 76. IC 24-4.5-6-107.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 107.5. It is a violation of this article for a person or individual subject to this article to:**

(a) directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(b) engage in any unfair or deceptive practice toward any person;

(c) obtain property by fraud or misrepresentation;

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(d) solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this article may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(e) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(f) conduct any business covered by this article without holding a valid license as required under this article, or assist or aid and abet any person in the conduct of business under this article without a valid license as required under this article;

(g) fail to make disclosures as required by this article and any other applicable state or federal law, including regulations under that law;

(h) fail to comply with this article or rules adopted under this article, or fail to comply with any other state or federal law, including the rules and regulations under that law, applicable to any business authorized or conducted under this article;

(i) make, in any manner, any false or deceptive statement or representation, including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;

(j) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the NMLSR or in connection with any investigation conducted by the director or another governmental agency;

(k) make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(l) collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this article;

(m) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of

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1 the improvements as established by the property insurer;
 2 (n) fail to account truthfully for money belonging to a party
 3 to a residential mortgage loan transaction; or
 4 (o) knowingly withhold, abstract, remove, mutilate, destroy,
 5 or secrete any books, records, computer records, or other
 6 information subject to examination under this article.

7 SECTION 77. IC 24-4.5-6-108 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 108. ~~Administrative~~
 9 ~~Enforcement orders.~~ = (1) After notice and **hearing an opportunity**
 10 **to be heard**, the department may order a creditor, ~~or a person acting in~~
 11 ~~his behalf a mortgage loan originator, or a person acting on behalf~~
 12 **of the creditor or mortgage loan originator**, to cease and desist from
 13 engaging in violations of this article. A respondent aggrieved by an
 14 order of the department may obtain judicial review of the order and the
 15 department may obtain an order of the court for enforcement of its
 16 order in any civil court. The proceeding for review or enforcement is
 17 initiated by filing a petition in the court. Copies of the petition shall be
 18 served upon all parties of record.

19 (2) Within thirty (30) days after service of the petition for review
 20 upon the department, or within any further time the court may allow,
 21 the department shall transmit to the court the original or a certified
 22 copy of the entire record upon which the order is based, including any
 23 transcript of testimony, which need not be printed. By stipulation of all
 24 parties to the review proceeding, the record may be shortened. After
 25 hearing the court may (a) reverse or modify the order if the findings of
 26 fact of the department are clearly erroneous in view of the reliable,
 27 probative, and substantial evidence on the whole record, (b) grant any
 28 temporary relief or restraining order it deems just, and (c) enter an
 29 order enforcing, modifying, and enforcing as modified, or setting aside
 30 in whole or in part the order of the department, or remanding the case
 31 to the department for further proceedings.

32 (3) An objection not urged at the hearing shall not be considered by
 33 the court unless the failure to urge the objection is excused for good
 34 cause shown. A party may move the court to remand the case to the
 35 department in the interest of justice for the purpose of adducing
 36 additional specified and material evidence and seeking finding thereon
 37 upon good cause shown for the failure to adduce this evidence before
 38 the department.

39 (4) The jurisdiction of the court shall be exclusive and its final
 40 judgment or decree shall be subject to review by the court on appeal in
 41 the same manner and form and with the same effect as in appeals from
 42 a final judgment or decree. The department's copy of the testimony

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shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated within thirty (30) days after a copy of the order of the department is received. If no proceeding is so initiated, the department may obtain a decree of the civil court for enforcement of its order upon a showing that an order was issued in compliance with this section, that no proceeding for review was initiated within thirty (30) days after copy of the order was received, and that the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the department may not issue an order pursuant to this section but may bring a civil action for an injunction (IC 24-4.5-6-111).

SECTION 78. IC 24-4.5-6-110 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 110. ~~Injunctions Against Violation of Article~~ — The department may bring a civil action to restrain a person from violating this article, **or other state or federal law or regulation**, and for other appropriate relief.

SECTION 79. IC 24-4.5-6-201, AS AMENDED BY P.L.217-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 201. (1) This section ~~IC 24-4.5-6-202~~, and ~~IC 24-4.5-6-203~~ **sections 202 and 203 of this chapter** apply to a person, including a ~~supervised financial organization~~, **depository institution**, but not including a collection agency licensed under IC 25-11-1, engaged in Indiana in any of the following:

(a) Making consumer credit sales, consumer leases, or consumer loans.

(b) Taking assignments of rights against debtors that arise from sales, leases, or loans by a person having an office or a place of business in Indiana.

(c) Undertaking direct collection of payments from the debtors or enforcement of rights against the debtors.

(d) Placing consumer credit insurance, receiving commissions for consumer credit insurance, or acting as a limited line credit insurance producer in the sale of consumer credit insurance.

(e) Selling insurance or other benefits, the charges for which are approved by the department as additional charges under IC 24-4.5-2-202 or IC 24-4.5-3-202.

(2) This section ~~IC 24-4.5-6-202~~, and ~~IC 24-4.5-6-203~~ **and sections 202 and 203 of this chapter** are not applicable to a seller whose credit sales consist entirely of sales made pursuant to a seller credit card

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issued by a person other than the seller if the issuer of the card has complied with the provisions of this section ~~IC 24-4.5-6-202, and IC 24-4.5-6-203~~, **and sections 202 and 203 of this chapter.**

(3) This section ~~IC 24-4.5-6-202, and IC 24-4.5-6-203~~ **and sections 202 and 203 of this chapter** apply to a seller whose credit sales are made using credit cards that:

- (a) are issued by a lender;
- (b) are in the name of the seller; and
- (c) can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

SECTION 80. IC 24-4.5-6-202, AS AMENDED BY P.L.217-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 202. (1) Persons ~~other than applicants for a license under IC 24-4.5-3-502(3)~~, that are subject to ~~IC 24-4.5-6-201~~, this section and ~~IC 24-4.5-6-203~~ **sections 201 and 203 of this chapter** shall file notification with the department within thirty (30) days after commencing business in Indiana and thereafter on an annual basis, on the date set forth in subsection (2). The notification shall state the:

- (a) name of the person;
- (b) name in which business is transacted if different from subdivision (a);
- (c) address of principal office, which may be outside Indiana; and
- (d) address of all offices or retail stores, if any, in Indiana at which consumer credit sales, consumer leases, or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within Indiana at which business is transacted.

(2) A person required to be licensed under this article shall file the notification required by subsection (1) not later than December 31 of each year. All other persons subject to this section shall file the notification required by subsection (1) not later than January 31 of each year.

(3) Persons subject to ~~IC 24-4.5-6-201, IC 24-4.5-6-203~~, **sections 201 and 203 of this chapter** and this section shall notify the department not later than thirty (30) days after the person:

- (a) has a change in name, address, or principals;
- (b) opens a new branch, closes an existing branch, or relocates an existing branch;
- (c) files for bankruptcy or reorganization;
- (d) is notified that the person is subject to revocation or suspension proceedings by a state or governmental authority with regard to the person's activities;

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- 1 (e) is under indictment for a felony involving fraud, deceit, or
2 misrepresentation under the laws of Indiana or any other
3 jurisdiction; or
4 (f) has been convicted of or pleaded guilty or nolo contendere to
5 a felony involving fraud, deceit, or misrepresentation under the
6 laws of Indiana or any other jurisdiction.

7 SECTION 81. THE FOLLOWING ARE REPEALED [EFFECTIVE
8 JULY 1, 2009]: IC 24-4.5-1-303; IC 24-4.5-3-503.5; IC 24-4.5-3-506;
9 IC 24-4.5-3-507.

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